DEPARTMENT OF THE INTERIOR,
COMMISSIONER TO THE FIVE CIVILIZED TRIBES.
Muskogee, Indian Territory, February 13, 1906.

In the matter of the application for the transfer of the names of Susan Brashears, Mary Jane McCoy, Michael McCoy, Lizzie Robuck, Francis Boatright, Emma Cook, Isaac, Lila, Nellie, Willie and Eva Cook from the roll of Choctaw Freedmen to the roll of citizens by blood of the Choctaw Nation.

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Under the regulations adopted by the Commissioner to the Five Civilized Tribes January 2, 1906, there was filed on January 15, 1906, by Albert J. Lee, Ardmore, Indian Territory, the attorney for the petitioners, a petition of Susan Brashears, Mary Jane McCoy, Michael McCoy, Lizzie Robuck, Francis Boatright and Emma Cook, children of the said Susan Brasheras, Isaac Cook, Lila Cook, Nellie Cook, Willie Cook and Eva Cook, minor children of the said Emma Cook, for the correction of the enrollment records of the Commissioner to the Five Civilized Tribes, in the matter of their enrollment as freedmen of the Choctaw Nation, and for the transfer of their names from the said freedmen roll to the roll of Choctaw citizens by blood.

January 30, 1906, the petitioners, Susan Brashears, Atlas, Indian Territory, Mary Jane McCoy, Atlas, Indian Territory, their attorney of record, Albert J: Lee, Ardmore, Indian Territory, and Messrs. Mansfield, McMurray & Cornish, attorneys for the Choctaw and Chickasaw Nations, South McAlester, Indian Territory, were advised that the Commissioner to the Five Civilized Tribes would at his office at Muskogee, Indian Territory, on Tuesday, February 13, 1906, nine o'clock A. M., hear such testimony and receive such other evidence as might be presented by the petitioners in support of their application for the transfer of their names from the roll of Choctaw Freedmen to the roll of citizens by blood of the Choctaw Nation, and by the attorneys for the Choctaw and Chickasaw Nations.

Now on this 13th day of February, 1906, at nine o'clock A. M., this case being called for hearing, in conformity with the notices to the petitioners, their attorney of record, and the attorneys for the Choctaw and Chickasaw Nations, the following appearances were entered and proceedings had:

Appearances:

Susan Brashears and Mary Jane McCoy, Petitioners.
Albert J. Lee, attorney for petitioners.
G. Rosenwinkel, appearing on behalf of Mansfield, McMurray & Cornish, attorneys for Choctaw and Chickasaw Nations.

By Mr. Lee:

Now Mr. Commissioner, let the records show that the request was made to have included in the record the names of Oliver Boatright, Tommie Boatright, Jimmie Boatright, Marion Boatright, Cleaton Victor Boatright and George Washington Boatright, minor children of Francis Boatright, one of the petitioners herein.

By the Commissioner:

These children are not named in the original petition are they?

By Mr. Lee:

No sir:

By the Commissioner:

The hearing will be confined to the allegations contained in the petition under the regulations adopted by the Commissioner to the Five Civilized Tribes on January 2, 1906. The testimony to be taken in this case will not apply to those applicants.

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By Mr. Rosenwinkel:

The Choctaw and Chickasaw Nations wish to object to any proceedings being taken in this cause, for the reason that the records of the Commission to the Five Civilized Tribes do not show that any application was ever made by or on behalf of these applicants for their enrollment as citizens by blood of the Choctaw or Chickasaw Nations.

We object further, for the reason that even if such an application had been made that the Commission would be without jurisdiction to hear or consider their applications, because their names do not appear upon the tribal rolls of either of said nations within the meaning of the Act of May 31, 1900.

By Mr. Lee:

Just let the record show now that we submit that the objections made by the attorneys for the Choctaw and Chickasaw Nations is in fact an answer to the petition filed in this case and is barred by the rules and regulations adopted by the Commissioner to the Five Civilized Tribes January 2, 1906.

We further object to the insertion of the objection of the attorneys for the Chickasaw and Choctaw Nations, on the grounds that no objection can be made to testimony introduced except such objection is made upon the introduction of the testimony of the witnesses, for the reasons that it is incompetent, immaterial or irrelevant to the issue as shown by the petition.

By Mr. Lee:

Now I want to ask if it is the practice of the Commissioner under the regulations to conduct the examination of the petitioners.

By the Commissioner:

The Commissioner will certainly conduct the examination to such an extent as to satisfy the Commissioner as to the identification of the applicants.

By Mr. Lee:

We wish to submit under the regulations we are entitled to conduct our own examination in chief, we wish to conduct our own examination.

(No objection offered by Commissioner).

SUSAN BRASHEARS, being duly sworn, testified as follows:

By the Commissioner:

Q What is your name? A Susan Brashears.
Q How old are you? A About 59, I think that is what I said when I was up before.
Q Where do you live? A I live near Hugo, Kiamitia County.
Q Have you been enrolled as a Choctaw or Chickasaw Freedman?
A Been enrolled as a Choctaw Citizen.
Q Citizen, Freedman? A Yes sir.
Q Have you selected your allotment? A Just got twenty acres, all I got.
Q That is your entire allotment? A Yes sir, I think so, little strip of land.
Q How long have you been named Susan Brashears? A Going on five years or six.
Q Know what name you were enrolled under? A Susan McCoy.

The witness is identified upon the records of this office on Choctaw Freedmen Roll Card No. 615, and opposite No. 1346 upon the final rolls of Choctaw Freedmen approved by the Secretary of the Interior.

By Mr. Lee:

Q Are you enrolled by the Dawes Commission? A Yes sir.
Q How were you enrolled by the Dawes Commission? A Colored.
Q What do you mean, on the Freedmen Roll? A Yes sir.
Q Were you ever enrolled on any of the tribal rolls? A My old man said I was.

(Answer of the witness objected to by Mr. Rosenwinkel).

By the Commissioner:

Objection sustained.

By Mr. Lee:

Q I want to ask you when you were married to McCoy? When I was first adopted as a Choctaw citizen.
Q When were you adopted as a Choctaw citizen? A First adopted at old Goodland.
Q As to point of time? A I married first and walked right on in and was adopted.
Q What year? A I couldnt tell what year.
Q What year were you married to McCoy; let me ask it a different way; how long after the war were you married to McCoy, about how long? A About five years before I married after the war.
Q Immediately upon your marriage you were adopted as a citizen?
A Yes sir.
Q That adoption was as an Indian citizen of the Choctaw Nation, was it? A Yes sir.

By Mr. Rosenwinkel:

Q Who adopted you as an Indian citizen? A One Green Thompson, used to follow around. Green Thompson was living at that time.
Q Who was it adopted you as an Indian citizen? A I mean to say Green Thompson.
Q Dont you know whether you were adopted as a Freedman or Indian citizen? A Adopted as colored citizen, Freedman.
Q Ever attempt to draw any money? A No sir.
Q Never drew any? A No sir.

By Mr. Lee:

Q The adoption that you speak of was the adoption after you were married to McCoy about five years after the Civil War?
A Yes sir.
Q You just answered you were adopted as a freedman? A I was adopted as a citizen.

By the Commissioner:

Is it contended that this woman Susan Brashears was adopted by the Choctaw Tribe of Indians as a citizen of the Choctaw Nation?

By Mr. Lee:

Yes sir, and appears on the tribal rolls as such.

By the Commissioner:

Was she adopted by any act of the Choctaw National Council or any Citizenship Committee.

By Mr. Lee:

We dont contend that that is the case; our only contention

is that this person is an enrolled Choctaw citizen, on the tribal rolls of citizens by blood of the Choctaw Nation.

By the Commissioner:

On what roll?

By Mr. Lee:

I think she appears on the 1885 roll.

By the Commissioner:

Q Susan, how old are you now? A About 59 I guess, this coming March, 6th of March.
Q In this petition you also mention Mary Jane McCoy, is she living? A Yes sir, she sits right here.
Q Is she your daughter? A That is my child.
Q How old is Mary Jane McCoy? A I cant keep up with their ages, she can speak for herself.
Q About how old is she? A About 15 I guess, I dont know how old she is, I cant keep up with their ages.
Q Now is Michael McCoy your son? A Yes sir.
Q Is he living? A Yes sir, at home.
Q Is Lizzie Robuck your daughter? A Yes sir.
Q Under what name is Lizzie enrolled? A McCoy.
Q Are Francis Boatright and Emma Cook your children? A Yes sir, that is my two children.
Q Are they all living? A Yes sir, they are living.
Q Whose children are Isaac, Lila, Nellie, Willie and Eva Cook?
A Emma's children.
Q Are they all living? A Yes sir.
Q Now are these persons that you have named in this petition, and concerning whom you have just testified, they have been enrolled as Choctaw Freedmen have they not? A That is what they were.
Q All selected allotments? A All but one, Francis, the smallest one.
Q Now you are 50 years of age? A Yes sir, I guess.
Q Where were you born? A In the Choctaw Nation.
Q Were you a slave? A Yes sir.
Q Whose slave? A Colbert's, old man, Sam Colbert.
Q Have you lived in the Choctaw Nation continuously since the time of your birth up to the present time? A Dont know any other place but that.
Q Now whatever rights, if any, that these other petitioners have, your children and grand-children, are through you are they not?
A Yes sir.

By Albert J. Lee:

We didnt put in the record that some of these children are enrolled on the 1885 roll, they are there except Mary Jane McCoy; I didnt deem it necessary that that should be put in the record, by reason of her being on the roll.

By the Commissioner:

When did you apply to the Dawes Commission for the enrollment of yourself and family as Choctaw Freedmen? A Down there at Atoka.
Q When was that? A I dont know what time it was, sometime ago.
Q How long ago? A Been over a year, I guess, since I was up to Atoka.
Q What did you do at Atoka? A I went up there and filed on 20 acres of land.
Q That is when you selected your allotment? A Yes sir.
Q I am talking about when you wnet to the Dawes Commission and applied for the enrollment of yourself and family? A When did I?
Q Yes. A We were enrolled by the Dawes Commission when they were at old Goodland.
Q Was that the only time you went before the Dawes Commission to be enrolled? A Yes sir, Goodland, I went twice, when they was at old Goodland, the Dawes Commissioner had lots of camps.
Q Was that the only time that you went before the Dawes Commission to be enrolled, when they were at Goodland in those tents?
A Yes sir.

By Mr. Lee:

We will let it be stated that she didnt make any assertion of her rights as a citizen by blood when she was enrolled as a Freedman of the Choctaw Nation.

By the Commissioner:

Now do I understand Mr. Lee that it is not contended in behalf of these persons that they have ever asserted any rights to be enrolled as citizens of the Choctaw Nation.

By Mr. Lee:

It is contended that it is immaterial whether they did or did not at the time they were enrolled as Choctaw Freedmen make any assertion of Choctaw descent, or rights as Choctaw citizens by blood.

By the Commissioner:

Then there is no contention, as I understand, that these people specifically within the time prescribed by the Act of July 1, 1902, applied to the Dawes Commission to be enrolled as citizens of the Choctaw Nation, or asserted any rights to enrollment as such.

By Mr. Lee:

They never formally.

By the Commissioner:

Have they ever applied?

By Mr. Lee:

I don't know.

By the Commissioner:

Q Do you remember that you have ever made any application to this Commission up to three years ago last Christmas for the enrollment of yourself, children and grand-children as citizens by blood of the Choctaw Nation. A No answer.

By Mr. Lee:

Q When you were before the Commission and enrolled as a Freedman did you make any assertion of the Choctaw blood of yourself and children? A Yes sir, that was up at Antlers.
Q When was you at Antlers? A When they was taking up people's names up there.
Q How long ago was that? A I dont know, I cant tell you when it was.
Q About how long? A I dont know what time it was.

By the Commissioner:

Q Have you or your children ever been enrolled by the Choctaw Tribal authorities as citizens of the Choctaw Nation? A No answer.

By Mr. Lee:

Commissioner please, she answered she was after she married McCoy.

By the Commissioner:

Q Have you? A I told you that I was.
Q You said you had been adopted? A Yes sir.
Q Have you ever been adopted, your name ever been put on any roll?
A What do you mean.
Q You know what the rolls are; when the Choctaws made the roll of citizens? A When they adopted us, didnt they put us on the roll?
Q When who adopted you? A The Dawes Commission I guess.
Q Who is this man, McCoy, that you married, who is he? A Choctaw.
Q What is his full name? A Oliver McCoy.
Q How long has he been dead? A Nine years.
Q How many children did you have by him? A Well I have got two dead and five living, seven children.
Q What are their names? A Francis, Emma, Michael, Lizzie and Mary, two dead.
Q What are the names of the ones dead? A Molsy and Tommie.

By Mr. Lee:

Q Mary also. A Yes sir, I said Mary.

By the Commissioner:

Q Have you or these children ever drawn any money as citizens of the Choctaw Nation? A We never drawed none, their Pa did.
Q You say your husband, McCoy, has been dead about nine years?
A Been dead about nine years.
Q Was he living when the 1893 payment was made to the Choctaws?
A When they drawed so much money?
Q $103 apiece? A Yes sir, he was living.
Q Did he draw any money? A Yes sir.
Q Did he draw any money for you or the children at that time?
A Drawed for himself.
Q Did he attempt to draw for you or the children? A I never did ask him.
Q You was born a slave, wasnt you? A Yes sir, I was a slave.
Q A slave of Sam Colbert, a Choctaw Indian? A Old man Colbert.
Q Now if you had any rights as a Choctaw citizen you have acquired them by your marriage to McCoy? A Yes sir.
Q You are not positive of any Choctaw blood are you? A I dont claim to be.
Q When were you married to McCoy? A I told you it was at old Goodland, I married and was registered.
Q How long ago was that? A I couldnt tell you, been such a long time.
Q About how long? A I dont know sir, I cant tell you.
Q Who married you to McCoy? A Solomon Hotama.
Q Did you get a marriage license and certificate? A He never gave it to us, my old man told me it was recorded in a book.
Q Have you any evidence of your marriage to this Choctaw Indian McCoy? A I never got none at all.
Q Now you stated in your testimony that whatever rights if any your children and grand-children had were entirely through you, was that correct? A No sir, I didnt tell you that.
Q Now in this petition you claim that you are a Choctaw by blood and ask that your name be transferred from the roll of Choctaw Freedmen to the roll of citizens by blood of the Choctaw Nation, now you are not positive of any Choctaw blood at all are you?
A I dont know nothing about my blood, dont know nothing about my blood. I told you once what my father was.
Q Your father and mother were both negros and slaves, were they?
A No sir.
Q You do not claim any rights as a citizen of the Choctaw Nation except by reason of your marriage to this man, McCoy?
A No answer.

By Mr. Lee:

The petition here states that her father, Martin Guess, was a white man, an adopted citizen of the Choctaw Nation; that is before the Commission, if the Commissioner please.

By the Commissioner:

Q Answer the question please? A My father was a Choctaw man.
Q Were your father and mother both citizens of the Choctaw Nation?
A What you mean, applied here to this nation?

Q Do you claim any rights as a Choctaw citizen through your father or mother? A My mother was a colored woman. My father was a Choctaw man, come here with the Indians from old Mississippi, lived here with them, and died here.
Q Was he a citizen of the Choctaw Nation, an enrolled citizen of the tribe? A I guess he was by him coming up with them.
Q You don't know? A No sir, I dont know, come here with them when they first come to this country.
Q Now Susan at the time you appeared before the Dawes Commission at Goodland, did you say anything about your children being entitled to enrollment as Choctaw Indians? A What place you mean?
Q When you were at Goodland, when you applied for your enrollment and the enrollment of your children? A No answer.

By Mr. Lee:

I want to ask if the Commissioner deems it his right or his duty to take upon himself the cross examination of the witnesses, when there is present for that purpose an attorney for the Choctaw and Chickasaw Nations.

By the Commissioner:

Objection is overruled. The Commissioner to the Five Civilized Tribes is authorized to avail itself of any reasonable means to reach the facts with reference to the right of any applicant.

By the Commissioner:

Q Answer that question, Susan; I want to know when you applied to the Dawes Commission for the enrollment of yourself and your children as Choctaw Freedmen, and you said nothing about them being entitled to enrollment as Choctaw citizens by blood of the Choctaw Nation? A Yes sir, I did, I told them my children ought to be enrolled as Choctaws, I sure did.
Q Now tell us exactly what took place there? A They enrolled us, that is all my children. They said that my children ought not to come on the colored roll at all, ought to be on the Indian roll.
Q Who told you? A Man doing the work.
Q Who was it? A I cant tell you, one man there at the time who was old Dick Murray's son, where he is I dont know. He asked my girl how she come to be down on the colored roll and asked her, why aint you on the roll with your daddy.
Q Who was it? A One of Murray's boys, old Dick Murray's son, dont know whether he is living or not.
Q What was the full name of this Choctaw Indian that you married?
A Oliver Stock McCoy.
Q Did he have any other name? A Boss, just a nickname, short name.

By Mr. Rosenwinkel:

Q Do you remember the name of the man that swore you at Goodland when you appeared before the Commission? A No sir, I couldnt, they were strangers to me.

Q Well you remember that dont you? A Dont remember who he was.
Q You went before him did you? A Yes sir.
Q Held up your hand did you? A Yes sir, he was off to one side of the room where the colored people were.
Q Who was off to one side? Indians at one table and colored people at one table? A Yes sir.
Q You went where the colored people were did you not? A Yes sir.
Q If you were an Indian and claimed Indian rights whey did you not go where the Indians were? A Well, they would have pushed me away.
Q You are quite positive that they would have pushed you away?
A Yes sir.
Q Would you remember that Commissioner's name if you heard it now?
A No sir, I wouldnt know his name.
Q Did you have any conversation with him? A No sir.
Q You didnt tell him that you were an Indian? A No sir.
Q Didnt tell him that your children were Indians? A Yes sir.
Q This Commissioner that swore you? A I told him that I was a colored lady.

By Mr. Lee:

Q Why did you say that if you had have gone up to the table where they were enrollingIndians they would have pushed you away, what makes you think they would? A My old man wasnt there at the time, I couldnt go up by myself, if he had have been living I might have walked up with him.
Q Well, that would not be sufficient for making you think you couldnt go up there, wasnt other colored people going up there?
A You see we just had to go in and come right out, they would not allow us in there.

On Page 11 of the 1885 Census Roll of Kiamitia County of the Choctaw Nation, opposite No. 166, appears the name of Oliver McCoy, 34 years of age, a full-blood Choctaw Indian; opposite No. 167 appears the name of Susan McCoy, 33 years of age, a colored woman, and the notation, "Citizen by marriage to McCoy." The names of Francis McCoy, Emily McCoy, Molsy McCoy, Michael McCoy, and Elizabeth McCoy appear upon said record opposite the numbers 168, 169, 170, 171 and 172 respectively, as colored persons, with the notation opposite their names "Half-blood citizens on father's side".

The names of none of the petitioners appear upon the 1893 Choctaw leased district payment roll or the 1896 Census roll of citizens of the Choctaw Nation.

Witness Excused.

Cora Moore, being duly sworn, states that as stenographer to the Commissioner to the Five Civilized Tribes, she reported the proceedings had in the above entitled cause on the 13th day of February, 1906, and that the above and foregoing is a transcript of her stenographic notes taken in said cause on said date.

(Signed) Cora Moore.

Subscribed and sworn to before me this 20th day of February, 1906.

(Signed) Myron White,

(SEAL) Notary Public.

-----ooOoo-----

Lenora B. Ashton, as stenographer to the Commissioner to the Five Civilized Tribes, on oath states that she made the above and foregoing copy, and that the same is a true and complete copy of the original transcript of the proceedings had at Muskogee, Indian Territory on February 13, 1906, in the matter of the transfer of the names of Susan Brashears, et al., from the approved Choctaw Freedmen roll to the roll of citizens by blood of the Choctaw Nation.

Lenora B. Ashton

Subscribed and sworn to before me this 20th day of November, 1906.

John E. Tidwell

Notary Public.

Muskogee, Indian Territory, June 6, 1906.

Albert J. Lee,

Ardmore, Indian Territory.

Dear Sir:

This office is in receipt of your letter of June 2, 1906, requesting early action in the matter of the application of Susan Brashears et al. for transfer from the roll of Choctaw freedmen to the roll of citizens by blood of the Choctaw Nation.

You are advised that decision will be rendered in said case as early as practicable.

Respectfully,

Commissioner.

CM

COPY.

MC-19-6.

Muskogee, Indian Territory, January 19, 1906.

Albert J. Lee,

Ardmore, Indian Territory.

Dear Sir:

Receipt is hereby acknowledged of your letter of January 13, 1906, transmitting the following petitions for the transfer of the names of the petitioners from the Choctaw or Chickasaw Freedmen Rolls to the Rolls of citizens by blood of the Choctaw or Chickasaw Nations:

Elizabeth Davis, et al.
Susuan Brashears, et al.
Hanna Stanley, et al.
Alexander Fisher, et al.
Andrew McAfee, et al.
Alex Miller, et al.
Tommie King, et al.
Sorena Willis, et al.
Lorenzo Russell
Lelar Robins, et al.
Francis Benson, et al.
Redella Giddens, et al.
Cretia Shoals, et al.
Calvin Davis
Mary J. Burton, et al.
Mary Butler, et al.
Oliver Colbert
Delbert Green
Lucy Thompson, et al.
Jerry Hampton
Charlie Alexander, et al.
Amelia Brashears
Joe Battiece, et al.
Moses Fulsom, et al.
Jordan Fulsom, et al.
Josie Brown, et al.
Wilson Everidge, et al.
Richard Thompson.
Kizzie Fulsom, et al.

You will be advised of any action taken by this office on said petitions.

Respectfully,

SIGNED Tams Bixby.

Commissioner.

Receipt is hereby acknowledged of a copy of the testimony taken at Muskogee I.T. Feb 13-1906 in the matter of the petition for the transfer of the names of Susan Brashears et al from the roll of Choctaw freedmen to the roll of citizens by blood of the Choctaw Nation.

Albert Lee

J. F. Jr.

DEPARTMENT OF THE INTERIOR,

D. C. 10529-1907. WASHINGTON. FHE.
I.T.D.3616-1907.

February 19, 1907.

L. R. S.

Direct.

Commissioner to the Five Civilized Tribes,

Muskogee, Indian Territory.

Sir:

January 31, 1907, you transmitted a petition for the transfer of the names of Susan Brashears, Mary Jane McCoy, Michael McCoy, Francis Boatwright, Lizzie Robuck, Emma Cook, Isaac Cook, Lila Cook, Nellie Cook, Willie Cook and Eva Cook from the roll of Choctaw Freedmen to the roll of citizens by blood of the Choctaw Nation, including your decision of January 31, 1907, denying such petition.

Reporting February 15, 1907 (Land 12507-07), the Indian Office recommends that said petition be denied. A copy of its letter is inclosed.

Your decision is hereby affirmed. The papers in the case and a carbon copy hereof have been sent to the Indian Office.

Respectfully,

Thos Ryan,

1 inc. and 2 for Ind. Of. First Assistant Secretary.

A. F. Mc.

2-20-07.

--Copy--

DEPARTMENT OF THE INTERIOR,

OFFICE OF INDIAN AFFAIRS,

LAND.
12507-1907. WASHINGTON.

February 15, 1907.

The Honorable,

The Secretary of the Interior.

Sir:

There is forwarded herewith report of Commissioner Rixby, dated January 31, 1907, relative to a petition filed January 15, 1906, praying for the transfer of the names of Susan Brashears, Mary Jane McCoy, Michael McCoy, Francis Boatwright, Lizzie Bobuck, Emma Cook, Isaac Cook, Lila Cook, Nellie Cook, Willie Cook and Eva Cook from the roll of Choctaw freedmen to the roll of citizens by blood of the Choctaw Nation, with the order of the Commissioner of January 31, 1907, denying the petition.

All of the petitioners herein have been enrolled as Choctaw freedmen, and the Commissioner in decision of January 31, 1907, says that it does not appear from the record of his office that any application has ever been made for the admission of the petitioners as citizens by blood of the Choctaw or Chickasaw Nation under the provisions of the Act of June 10, 1896 (29 Stat.L., 321), or for their enrollment as citizens by blood prior to December 25, 1902.

The record contains no documentary evidence to show that application has ever been made by or on behalf of the petitionersfor

enrollment as citizens by blood of the Choctaw Nation prior to January 15, 1906, the date of the petition herein. Therefore no additional right to enrollment as citizens by blood accrues tothe petitioners by reason of the provisions of section 4 of the Act of April 26, 1906 (34 Stat.L., 137).

It is therefore recommended that the petition be denied.

Very respectfully,

C. F. Larrabee,

Acting Commissioner.

AJW-EH.

BEFORE THE HONORABLE COMMISSIONER TO THE FIVE CIVILIZED TRIBES,

AT MUSKOGEE, INDIAN TERRITORY.

PETITION OF SUSAN BRASHEARS: MARY JANE McCOY, MICHAEL McCOY, LIZZIE ROBUCK, FRANCIS BOATWRIGHT AND EMMA COOK, CHILDREN OF THE SAID SUSAN BRASHEARS, AND ISAAC COOK, LILA COOK, NELLIE COOK, WILLIE COOK, AND EVA COOK, MINOR CHILDREN OF THE SAID EMMA COOK, FOR THE CORRECTION OF THE ENROLLMENT RECORDS OF THE COMMISSION TO THE FIVE CIVILIZED TRIBES, IN THE MATTER OF THEIR ENROLLMENT AS FREEDMEN OF THE CHOCTAW NATION, AND FOR THE TRANSFER OF THEIR NAMES FROM THE SAID FREEDMAN ROLL FO THE ROLL OF CHOCTAW CITIZENS BY BLOOD.

S T A T E M E N T .

Michael McCoy, Mary Jane McCoy, Francis Boatwright, Emma Cook and Lizzie Robuck are legitimate children of Oliver Stock McCoy, who was somtimes called Boss McCoy, a recognized and enrolled Choctaw citizen of 1/2 white and 1/2 Choctaw blood, and of Susan McCoy, wife of the said Boss McCoy, now Susan Brashears. The aforesaid Mother of the above named pettitioners, is the daughter of Martin Guess, a white man, but adopted citizen of the Choctaw Nation, her mother was a colored woman and a slave.

Emma Cook, one of the above petitioners, is the lawful wife of Newton Cook, a negro, and by him is the mother of five (5) children, Isaac, Lila, Nellie, Willie and Eva.

When Susan Brashears, then Susan McCoy, appeared before the Commission to the Five Civilized Tribes, for the enrollment of herself and her said children, she stated the facts as above set forth and asked to be enrolled as Choctaws by Blood, which statement and request resulted in her enrollment and the enrollment of her children as Freedmen of the Choctaw Nation.

Being the descendants of recognized Choctaw citizens, on the side of both father and mother, and having been born with in the Choctaw Nation and to its allegiance, your petitioners herein respectfully represent to th e Commissioner under the opinion of the Assistant Attorney General for the Department of the Interior in the case of Joe and Dillard Perry, they are entitled to a correction of the Choctaw enrollment records, by the transfer of their names from the said Freedman Roll to the Roll of choctaw citizens by blood.

Susan Brashears, one of the petitioners herein, under oath states the facts above set out, which sworn statement is hereto attached and made part of this petition.

Respectfully submitted.

(Signed(Albert J. Lee
Attorney for Petitioners.

Registry Receipt Attached.

Albert J. Lee, attorney for the petitioners in the above matter, states that on this 13th day of January 1906, he mailed under registry receipt, a copy of the above petition to Mansfield, McMurray and Cornish, attorneys for the Choctaw and Chickasaw Nations, at South McAlester, Indian Territory, which registery receipt is hereto attached.

(Signed) Albert J. Lee,

Subscribed and sworn to before me this 13th day of January, 1906.

(Signed) Mary J. Taylor
Notary Public, within and for the Southern District of the Indian Territory.

(SEAL)

My Commission expires March 10th, 1908.

UNITED STATES OF AMERICA
INDIAN TERRITORY
CENTRAL DISTRICT

AFFIDAVIT OF MARY JANE McCOY

MARY JANE McCOY, first being duly sworn, on oath states that she is 18 years of age, and lives at Atles, in said Nation and Territory aforesaid.

Affiant further states that she is of one quarter (1/4) Choctaw blood, her father, Oliver Stock McCoy, or Boss McCoy as he was called, was a recognized and enrolled Choctaw of 1/2 white and 1/2 Choctaw blood; that her mother was Susan McCoy, the lawful wife of Oliver Stock McCoy.

That her mother applied for her when she was before the Commission to the Five Civilized Tribes and they enrolled her as a freedman. That her roll number is 1349.

Mary Jane McCoy.

Subscribed and sworn to this 30, day of December 1905.
Notary Public.
R. F. Grafa.
(SEAL)
Commission expires July 28, 1908.

UNITED STATES OF AMERICA
INDIAN TERRITORY
CENTRAL DISTRICT

AFFIDAVIT OF SUSAN BRASHEARS

Susan Brashears, first being duly sworn, on oath states that she is about 58 years old and lives at Atlas, in said Nation and Territory.

Affiant further states that she has been the lawful wife of George Brashears, a Choctaw Citizen, since the 13th of March 1901, and that prior to that time for 33 years she was the wife of Oliver Stock McCoy, or sometimes called Boss McCoy, a recognized and enrolled Choctaw Citizen of 1/2 white and 1/2 Choctaw blood, by she had seven children, five of whom are living and are named as follows: Francis Boatwright, Emma Cook, Michael McCoy, Lizzie Robuck and Mary McCoy.

Affiant states that her father was a white man named Martin Guess , whowas an adopted Citizen of the Choctaw Nation, and that her mother was a colored woman and a slave.

That when she appeared before the Commission to the Five Civilized Tribes for the enrollment of herself and children she stated to the Commission that her children were of Choctaw blood and asked that they be enrolled as Choctaws by blood but that the Commission informed her that they would not consider her application as such but would enroll them as freedmen.

Her
Susan McCoy
Mark
(Signed) Susan xBrashears.

Witness to mark
W. L. Hama
R. F. Grafa.

(Seal)

Subscribed and sworn to before me this 30, day of December 1905.

R. F. Grafa
Notary Public.

Commission expires July 28, 1908.

Copy.

MC-30-4

Muskogee, Indian Territory, January 30, 1906.

Susan Brashears,

Atlas, Indian Territory.

Dear Madam:

You are herebyadvised that the Commissioner to the Five Civilized Tribes will, at his office at Muskogee, Indian Territory, on Tuesday February 13, 1906, at 9 o'clock A. M. hear any testimony that maybe submitted in support of the petition filed with this office for the enrollment of yourself and certain of your children and grand-children, as citizens of the Choctaw Nation.

Respectfully,

Sighed Wm.O.Beall.

Acting Commissioner.

Copy MC-30-3

Muskogee, Indian Territory, January30, 1906

Mary Jane McCoy,

Atlas, Indian Territory.

Dear Madam:

You are hereby advised that the Commissioner to the Five Civilized Tribes will, at his office at Muskogee, Indian Territory, on TuesdayFebruary 13, 1906, at 9 o'clock A. M., hear any testimony that may be submitted in support of the petition filed with this office for theenrollment of Susan Brashears, et al., as citizens of the Choctaw Nation.

Respectfully,

SIGNED
Wm.O. Beall.
Acting Commissioner.

Copy MC-30-1

Muskogee, Indian Territory, January 30, 1906.

Albert J. Lee,
Ardmore, Indian Territory.

Dear Sir:

You are hereby advised that the Commissioner to the Five Civilized Tribes will, at his office at Muskogee, Indian Territory, on Tuesday February 13, 1906, at 9 o'clock A. M., hear any testimony that maybe submitted insupport of the petition filed with this office for the enrollment of Susan Brashears, et al., as citizens of the Choctaw Nation.

Respectfully ,

SIGNED Wm O Beall.
Acting Commissioner.

Copy MC-30-2

Muskogee, Indian Territory, January 30, 1906.

Mansfield, McMurray & Cornish,

Attorneys for the Choctaw and Chickasaw Nations,

South McAlester, Indian Territory.

Gentlemen:

You are hereby advised that the Commissioner to the Five Civilized Tribes will, at his office at Muskogee, Indian Territory, on TuesdayFebruary 13, 1906, at 9 o'clock A. M., hear any testimony that may be submitted in support of the petition filed with this office for the enrollment of Susan Brashears, et al., as citizens of the Choctaw Nation.

Respectfully,

SIGNED.
Wm. O. Beall.
Acting Commissioner.

BEFORE THE HONORABLE SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C.

BRIEF AND ARGUMENT.

IN SUPPORT OF THE PETITION OF SUSAN BRASHEARS, MARY JANE MCCOY MICHAEL MCCOY, ELIZABETH ROBUCK ,FRANCIS BOATWRIGHT, AND EMILY COOK; ISAAC COOK, LILA COOK, NELLIE COOK, WILLAIM COOK AND EVA COOK, MINOR CHILDREN OF SAID EMILY COOK; OLIVER BOATWRIGHT, TOMMIE BOATWRIGHT, JIMMIE BOATWRIGHT, MARION BOATWRIGHT, CLEATON VICTOR BOATWRIGHT, AND GEORGE WASHINGTON BOATWRIGHT, MINOR CHILDREN OF SAID FRANCIS BOATWRIGHT, FOR INDIVIDUAL ALLOTMENTS TO THEM OF LAND IN THE CHOCTAW NATION AS MEMBERS OR CITIZENS OF THE SAID CHOCTAW TRIBE OR NATION.

TREATY PROVISION FOR CESSION OF LANDS WEST OF THE MISSISSIPPI RIVER.

Article two of the Dancing Rabbit Creek treaty negotiated September 15th, 1830, under which treaty the Government of the United States agreed to cede to the Choctaw Nation the lands now held in common by the said Choctaw Nation, provided:

> The United States under a grant specially to be made by the President of the United States shall cause to be conveyed to the Choctaw Nation a tract of country West of the Mississippi River in fee simple to them and their descendants to inure to them while they shall exist as a nation and live on it.

PATENT CONVEYING LANDS WEST OF THE MISSISSIPPI RIVER TO CHOCTAWS.

In pursuance with the treaty of 1830 the United States conveyed to the Choctaw Nation by patent under date of March 23rd, 1842, the identical lands now held in common by the people of the Choctaw Nation

> in fee simple to them and their descendants to inure to them while they shall exist as a nation and live on it liable to no transfer or alienation except to the United States or with their consent.

The fee to the land thus ceded was in the Choctaw Nation for the use and benefit of the members of the Choctaw Nation and their descendants.

A DESCENDANT

as defined by the Enc. of Law and Proceedure, Vol. 13, Page 1047 is:

> One sho descends, as offspring, however remotely; correlative to ancestor or an ascendant, one who has issued from an individual, including children, grandchildren and their children to the remotest degree.

In Van Beuren v. Dash, 30 N. Y. 393, per Denio, C. J. , the court defines "descendants"

> Thus we speak of the descendants of Abraham, of William the Conqueror, of George the Third and of the first and second president Adams, of Jefferson and Alexander Hamilton, while we say of Queen Elizabeth, of William of Orange, of Washington and Madison, that they left no descendants, or, in the words of the statute, that they respectively died, leaving no child or other descendant. These are common forms of speech, and the meaning is perfectly definite, and it is such as I have mentioned. The word is invaribly employed in that sense, in books of history, in memoirs, in biagraphies, in works of genealogy and in most every book which treats of men and their affairs.

Following the established meaning of the word descandant as it has come down to us from time immemorial through decisions of the highest courts of England and of the United States and as defined by all authorities, the Assistant Attorney General for the Department of the Interior, in a case involving the rights of parties to participate in the lands of the Chickasaw Nation under and by virtue of the provision of the treaty of 1830, and the patent issued thereunder, hereinabove quoted

and entitled

> In the matter of the application for the transfer of the names of Joe and Dillard Perry from the roll of Chickasaw freedmen to the roll of citizens by blood of the Chickasaw Nation.

rendered an opinion, which was duly approved by the Secretary of the Interior under date of November 11th, 1905, in which he defines the word descendants and the rights of the applicants to share in the communal lands of the Chickasaw Nation by reason of their descent from a recognized citizen by blood of the Chickasaw Nation. Says He:

> The treaty right (referring to the treaty of 1830- was to the Choctaw and Chickasaw Nations and their descendants. Dedescendants, as pointed out in the case of James W. Shirley, is a term of wider significance then heirs, or legitimate issue and includes those springing from an ancestor, whether legitimate issue or not. The descent of the applicants is fully and indubitably shown to be from Charles Perry, a Chickasaw by blood, recognized by him and born of a union that he and Eliza evidently regarded as a lawful one, openly avowed and by the Chickasaw Nation tolerated, which it did not compel him to abandon, or impose the penalties of its law upon him for contracting and observing. That law properly enough imposed no penalty of contamination of blood upon the innocent issue of such union. I am therefore clearly of the opinion that applicants are entitled to be transferred to the roll of Chickasaws by blood.

OLIVER MCCOY

the father of Mary Jane McCoy, Michael McCoy, Elizabeth Robuck, Francis Boatwright, and Emily Cook, and the grandfather of Isaac Cook, Lila Cook, Nellie Cook, William Cook and Eva Cook, and of Oliver Boatwright, Tommie Boatwright, Jimmie Boatwright, Marion Boatwright, Cleaton Victor Boatwright, and George Washengton Boatwright, was a recognized and duly enrolled citizen of the Choctaw Nation by blood. His name appears with other duly enrolled members by blood of the Choctaw Nation on the 1885 census roll of Kiamatia County. Likewise the name of Susan McCoy now Susan Brashears, and the name of each and every one of their children, hereinabove specifically named, appear on the 1885 census roll of Kiamatia County, with the single exception of Mary Jane, who was not then born. The name of Susan McCoy appears opposite the number 167 with the notation "citizen by

marriage to McCoy." Immediately following the names of Michael, Elizabeth, Francis and Emily, children of Oliver and Susan McCoy, which appear on the same roll, opposite the numbers 168-169-171 and 172, respectively, is the notation, "half blood citizens on father's side".

CONFIRMATION OF THE CENSUS ROLL OF 1885 BY ACT OF CONGRESS.

The act of Congress approved June 10th, 1896, provided:

> And provided, further, that the rolls of citizenship of the several tribes as now existing are hereby confirmed. . . . . .
>
> That the said Commission after the expiration of six months shall cause a complete roll of citizens of each of said nations to be made up from their records, and add thereto the names of citizens whose right may be conferred under this act, and said rolls shall be and are hereby made rolls of citizenship of said Nations or tribes,.....

The act of June 7th, 1897, construed and defined the words "rolls of citizenship" as used in the act of June 10th, 1896, to mean:

> The last authenticated rolls of each tribe which have been approved by the council of the Nation and the descendants of those appearing on such rolls.

The act of June 7th, 1897, then provides:

> And all other names appearing on such rolls shall be open to investigation by such Commission for a period of six months after the passage of this act. And any name appearing on such rolls and not confirmed by the act of June tenth, eighteen hundred and ninety-six, as herein construed may be stricken therefrom by such Commission where the party affected shall have ten days previous notice that said Commission will investigate and determine the right of such party to remain upon such roll as a citizen of such Nation.

The Attorney General for the Department of the Interior in the case of

Mary Elizabeth Martin, applicant for enrollment as a citizen of the Choctaw Nation.

rendered an opinion approved by Secretary Hitchcock, on March 24th, 1905, in which he defines clearly the powers of the

Commission to the Five Civilized Tribes, under the act approved June 10th, 1896. Says he:

These powers were to admit to citizenship persons claiming such right, whose right was denied or not recognized by the tribal authorities. The tribal rolls were confirmed and the Commission was required to give due force and effect to the rolls, usages, customs and laws of the tribes, not inconsistent with the treaties with the United States and its laws. The Commission had no authority to purge the rolls nor to deny citizenship to those entitled thereto under treaties and laws of the United States, or under Indian laws, usages and customs not inconsistent therewith. Beyond admitting persons to citizenship whose rights were not recognized by the tribal authorities, their power was merely to register and enter upon their roll those whose rights were recognized by the rolls, usages and customs of the tribes. It is the settled rule of the Department by the decision in the Wiley Adams and cases following it, that the action of the Commission under this act excluding enrolled persons, and action of the courts upon appeals from the Commission in such cases, was and is void, for want of jurisdiction of the subject matter.

The Attorney General then quotes the first provision of the act approved June 7th, 1897, hereinabove quoted, and says:

By this act descendants of persons on the roll were defined and regarded as on the roll where their parents were found, whether themselves actually on such roll or not and though born after the roll was made.

In the same opinion the Attorney General refers to the report of the Commission in which the Commission sets forth at length the difficulty it experienced in determining what Choctaw tribal rolls were confirmed by the act of June 10th, 1896, and concludes:

The Commission concluded by stating that as to the Choctaw applicants its future findings of tribal recongition will include the rolls of 1885 and 1896 censeses, and 1893 leased district payments. . . . . .

and the Attorney General concurs in the opinion of the Commission that these rolls were confirmed by the act of 1896. This holding is reaffirmed in the case of Lula F. Long, decided February 19th, 1906, and numerous other cases.

Under the last above quoted provision of the act of June 7th, 1897, the Commission could within six months from the passage of the act strike any name appearing on the tribal roll not confirmed by the act of June 10th, 1896, from said roll provided, the party affected "received ten days previous notice

that said Commission will investigate and determine the right of such party to remain upon such roll as a citizen of such Nation". This power must have been exercised by the Commission after due notice to the applicant, on or before the 7th day of December 1897. It did not exercise it in the case of any of the petitioners herein within the time prescribed by law, nor has the Commission ever asserted, to the knowledge of petitioners, that it ever disputed the fact that Oliver McCoy, and the other petitioners herein, whose names appear on the 1885 Choctaw census roll, were citizens by blood of the Choctaw Nation.

Thus by the act of 1896 as construed and defined by the act of 1897, the Choctaw census roll of 1885 was confirmed and made a part of the authenticated, official and final roll of citizenship of the Choctaw Nation, and every person whose name appeared on said roll together with their descendants, were by law made citizens of the Choctaw Nation. As the names of Oliver, Susan, Michael, Elizabeth, Francis and Emily McCoy, petitioners in the case at bar, appeared written on the 1885 census roll their citizenship was by law established and the names of their children were by operation of the act of Congress approved June 10th, 1896, placed on the 1885 census roll with the names of their parents and each and every one of them instantly became entitled to all the rights and privileges of any other duly and lawfully enrolled citizen of the Choctaw Nation.

The subsequent marriage of Susan McCoy, and of her children hereinabove named, to persons not citizens of the Choctaw Nation did not and could not affect either the rights of the mother or the children to enrollment. Once they become citizens by law of the Choctaw Nation they ever thereafter remain citizens unless divested of their citizenship by a constitutional enactment or by judgment of a court of competent jurisdiction.

The adoption of Susan McCoy by the Choctaw authorities

which is evidenced by the appearance of her name on the 1885 census roll, and the notation, "citizen by marriage to McCoy", made her a citizen in law and in fact, and she has ever since remained a citizen of said Nation. Her subsequent marriage to Brashears did not devest her of her citizenship in the Choctaw Nation. Such is the judicial finding by Judge Townsend, District Judge of the Southern District of Indian Territory in the case of

F. R. Robinson v. The Choctaw Nation

which decision was declared by the Attorney General for the Department of the Interior to be a correct statement of law in his opinion rendered in the case of

Mary Elizabeth Martin, applicant for enrollment as a citizen of the Choctaw Nation

and approved by the Secretary of the Interior March 24th, 1905. In the case of

F. R. Robinson v. The Choctaw Nation

the court in passing on the question as to whether or not a white man who had acquired his citizenship in the tribe by marriage to a Choctaw woman, forfeited his citizenship by subsequent marriage to a white woman, not a member of the Choctaw Nation, held that he not only did not forfeit his citizenship, but that each and every one of his children by his second wife, not a member of the Choctaw Nation and who had not a drop of Indian blood in their veins, became citizens of the Choctaw Nation at their birth by reason of their father's status as a citizen. The court says:

> Now, unless a marriage of a native Indian to a white woman, after his Indian wife shall have died, has the same effect on him-that is, decitizenizes him, divests him of all title to the Choctaw lands,and deprives him of a right to live in the country---the statute works an inequality, and the white man does not enjoy the same privileges as the native Indian. The citizenship is different, and the rights following therefrom are not the same. The one may do an act that the other cannot do; the one has a privilege, that of marrying a white woman, that the other does not enjoy. The important right of unrestricted selection of a wife enjoyed by the native Indian is denied the white citizen by marriage.

I therefore find that claimant is entitled to enrollment. I hold also that the offspring of such a marriage would be entitled to be enrolled; the father being a lawful citizen, his children would follow his citizenship, and by inheritance take any property rights he may have acquired thereby.

There was nothing in any of the treaties or laws that rendered invalid the adoption of Susan McCoy as a member of the Choctaw Nation. The Attorney General in the case of Mary Elizabeth Martin, hereinabove referred to, states the law correctly when he repudiates the decision of the Choctaw-Chickasaw Citizenship Court in the case of Bounds, and says:

In the case of Bounds the Citizenship Court based its reasoning upon the terms of the patent and treaty of 1830, in granting the lands, "to the Indian and their descendants" The grant was not "to the Indians" but "to the Choctaw Nation", "to them and their descendants". Nothing in the grant indicated a limitation to Choctaws by blood descent. Article IV of the treaty granted the Choctaw Nation a government under its own laws, which included their own body of unwritten laws, custom, as well as legislative statutes. It has been the immemorial custom of all the Indian tribes, to admit others than of their own blood to rights of citizenship, by marriage and adoption.

The citizenship of Oliver McCoy, the father and grandfather of all the petitioners herein except Susan McCoy, being an established fact and removed from the domain of controversy, and the citizenship of Susan McCoy being firmly established, as evidenced by her name appearing on the 1885 census roll of Kiamatia County, and never having been stricken therefrom by the Commission, either because it was placed thereon "by fraud or without authority of law" and the confirmation of said census roll by the act of Congress approved June 10th, 1896, their names were ipso jure placed on the authenticated, confirmed, official and final Choctaw citizenship roll. By the act of 1896 as construed and defined by the act of 1897, the names of each and every one of their children and grandchildren were likewise ipso jure placed on the same confirmed, authenticated, official and final Choctaw citizenship roll with their parents.

In the case of Mary Elizabeth Martin the Attorney General so holds. Says he:

As above shown the applicant was within the meaning of the letter of the law, on the roll, being born to enrolled parents.

Neither the Commission or the Court and any jurisdiction to deny her enrollment and no judgment of the court in assuming a jurisdiction that it did not have could bar her of the right unless she is barred by lack of Indian blood.

Again in the Mary Elizabeth Maryin case the Attorney General says:

Allegiance of birth is obtained by succession to the alligiance of the parent.

This is the fundamental and universal law of all organized societies or states and essential to their continued existence as such. The law is varied only in form as to which parent, where there is diversity in parental allegiance, fixed to inheritance of allegiance, or wherer the child in such case may elect to take the allegiance of one of the other parent. In no state, so far as I am aware, has it ever been held that the offspring of a citizen is a born stranger to the parent's allegiance, outcast from the parents civil state, citizen of no other, merely because the parent was born to, and for some part of his life owed, a foreign allegiance. It is not the parents race or blood that give citizenship to the child, but the parent's status of citizenship at the child's birth.

The case at bar presents indisputable facts. The names of Francis McCoy, nee Boatwright, Emily McCoy, nee Cook, Michael McCoy, and Elizabeth McCoy, nee Robuck, petitioners herein, appear written on the Choctaw census roll of 1885 with the notation, "half blood citizens on father's side." The name of Mary Jane McCoy does not appear thereon, but the records in charge of the Commission to the Five Civilized Tribes show that she is a daughter of Oliver McCoy and Susan McCoy, who was born to them subsequent to the preparation of said roll. Can it be contended that the 1885 census roll could have been confirmed by act of Congress approved June 10th, 1896, and that the names of Oliver McCoy, and Susan McCoy and their children appearing thereon were not confirmed thereby? Can it be contended that the name of Mary Jane McCoy, was not placed on the said roll with the names of her father, mother, sisters and brother by operation of law? Counsel for petitioners insist that such a contention would be an abuse of intelligence.

Can it be contended that the name of Isaac Cook, Lile Cook, Nellie Cook, William Cook and Eva Cook, children of Emily Cook, nee McCoy, were not placed on the same roll by operation of law on which the names of their mother, grandmother and grandfather

appeared? Can it be contended that the names of Oliver Boatwright, Tommie Boatwright, Jimmie Boatwright, Marion Boatwright, Cleaton Victor Boatwright, and George Washington Boatwright, children of said Francis Boatwright, nee McCoy, were not likewise placed on the roll by operation of law on which the names of their mother, grandmother and grandfather appeared? Certainly not. The proposition is so clear that "he who runs can read."

ACT OF CONGRESS APPROVED JUNE 28th, 1898.

On June 28th, 1898, the President approved an act (30th Stat. 495-502) which provided:

> That in making the rolls of citizenship of the several tribes as required by law.....Said Commission is authorized and directed to make rolls of citizens by blood of all other tribes (including the Choctaw and Chickasaw Tribes) eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made.....

This act gave to the Commission authority to purge the tribal census rolls of any names that had been placed thereon "by fraud or without authority of law", and to enroll all persons who were legally entitled to enrollment and their descendants born since such rolls were made. The words, "and their descendants born since such rolls were made" relate only to descendants of persons enrolled by the Commission and do not relate to descendants of persons enrolled by operation of law. Is it possible that Congress intended to give to the Commission authority over the enrollment of children that it did not have over the enrollment of the parent? The Commission had no authority to strike a name from a confirmed Choctaw roll unless the name had been placed thereon "by fraud or without authority of law". Was its jurisdiction any greater with reference to the children, whose names had been placed on the confirmed Choctaw tribal rolls, by operation of the act of 1896, than it was with reference to the parent? Counsel insist not

and that its jurisdiction never included the descendants of persons whose names had been duly and legally placed on the Choctaw tribal rolls confirmed by the act of 1896.

The language of the statute is plain. It directs the Commission to make correct roll of citizens by blood, to eliminate from the tribal rolls the names of persons that were placed thereon "by fraud or without authority of law" and to enroll such persons as have lawful right to enrollment, under the treaties and laws with and of the United States and in accordance with the laws, customs and usaged of the tribe, and their descendants born since such rolls were made.

The names of each and every one of the petitioners herein were either in law or in fact on the 1885 census roll, which had previously been confirmed by the act of Congress approved June 10th, 1896. The Commission had no power under this act to strike their names from said confirmed Choctaw roll unless they had been placed thereon "by fraud or without authority of law". Before it could assume jurisdicion of these cases it must have first determined that the name of Oliver McCoy, was placed on the confirmed Choctaw roll of 1885 "by fraud or without authority of law." But it never so found, and if such finding was ever made it is not a matter of record, and petitioners herein were never served with notice that the Commission intended to conduct such aninvestigation, and were never accorded any opportunity to establish their rights. If the Commission made such a finding without any notice whatever to the applicants it was void. But, as a matter of fact, the Commission never has held that the names of Oliver McCoy, his wife, Susan McCoy, and his children Francis, Emily, Michael and Elizabeth were placed on the confirmed Choctaw census roll of 1885 of Kiamatia County either "by fraud or without authority of law". Therefore the act approved June 28th, 1898, did not, inthe remotest degree affect the rights of any of the petitioners herein.

LANGUAGE OF ACT OF 1898 IMPOSSIBLE OF MISCONSTRUCTION.

The language of the above quoted provision of the act approved June 28th, 1898, is so plain that it is impossible of unintentional misconstruction, and yet the Commission assumed jurisdiction over all descendants of persons regardless of whether or not the name of the parent appeared on the tribal census roll confirmed by the act of June 10th, 1896.

By the exercise of arbitrary power, which it never possessed, it assumed jurisdiction over the rights of the petitioners herein, and in 1899 served notice by publication and otherwise on each and every one of the applicants in the case at bar to appear before it for examination and identification at Goodland. On or about six months previous to the date of the appearance of the petitioners herein before said Commission at Goodland said Commission decided that all persons of mixed Indian and negro blood took the status of their servile parent; that once of "servile descent always of servile descent". It is a metter of common knowledge that but few if any persons of mixed Indian and negro blood appearing before the Commission in response to its notice to persons claiming rights in the Choctaw Nation, to appear before it for examination and identification,were permitted to be examined at the place where persons of Indian, and mixed Indian and white blood were examined. All persons of Mixed Indian and negro blood were compelled to appear at the place where freedmen were being examined and were denied the privilege of asserting their rights as a citizen by blood of the Choctaw Nation. This is well known to all persons present at the time the Commission was examining and identifying applicants and appears from the letters of the Commission and affidavits of members of the freedman committee and others which are attached hereto and marked exhibit one. This also appears in the examination of Susan Brashears before the Commissioner on February 13th, 1906. She testified as follows:

DEPARTMENT OF THE INTERIOR
COMMISSIONER TO THE FIVE CIVILIZED TRIBES
Muskogee, Indian Territory, February 13, 1906.

In the matter of the application for the transfer of the names of Susan Brashears et al, from the roll of Choctaw Freedmen to the roll of citizens by blood of the Choctaw Nation.

By the Commissioner:
Q. Answer that question Susan; I want to know when you applied to the Dawes Commission for enrollment of yourself and your children as Choctaw freedmen, and you said nothing about them being entitled to enrollment as Choctaw citizens by blood of the Choctaw Nation. A. Yes sir, I did. I told them my children ought to be enrolled as Choctaws. I sure did.
Q. Now tell us exactly what took place there? A. They enrolled us, that is all my children. They said that my children ought not to come on the colored roll at all, ought to be on the Indian roll.
Q. Who told you? A Man doing the work.
Q. Who told you A. I can't tell you, one man there at the time who was old Dick Murray's son, where he is I don't know. He asked my girl how she came to be down on the colored roll and asked her, why aint you on the roll with your daddy.
Q. Who was it? A. One of Murray's boys, old Dick Murray's son, don't know whether he is living or not.

By Mr. Rosenwinkle, representing Mansfield, McMurray & Cornish.

Q. If you were an Indian and claimed Indian rights why did you not go where the Indians were? A. Well, they would have pushed me away.
Q. You are quite positive that they would have pushed you away? A. Yes sir.
Q. Would you remember that Commissioner's name if you heard it? now? A. No sir, I would'nt know his name.
Q.. Did you have any conversation with him. A. No sir.
Q. You did'nt tell him that you were an Indian? A. No sir.
Q. Did'nt tell him that your children were Indians? A. Yes sir.
Q. ThisCommissioner that swore you? A. I told him that I was a colored lady.

The duty was imposed upon the Commission by law to ascertain whether petitioners herein were citizens or freedmen of the Choctaw Nation. It did not perform its duty, for it never attempted to ascertain the fact that they were descendants of Oliver McCoy, whose names appeared on the 1885 census roll. It did not even attempt to ascertain the fact that petitioners herein had any Indian blood in their veins. It evidently designedly refrained from asking any questions that would bring out this fact. The only information sought by the Commission was that applicants herein were descendants of Susan McCoy, who was a negro woman. Even when the Commission was informed

of the descent of the children from Oliver McCoy, as appears from Susan's testimony hereinabove quoted, it did not even make any record of same.

Without authority of law and contrary to the plain mandate of Congress the Commission deliberately enrolled each and every one of the petitioners herein as freedmen and allotted them lands as such.

It sought then to confirm its illegal acts in the cases of the petitioners herein by securing the enactment of the legislation by Congress approved May 31st, 1900, which provided:

> That said Commission shall continue to exercise all authority heretofore conferred upon it by law. But it shall not receive, consider or make any record of any application of any person for enrollment as a member of any tribe in the Indian Territory who has not been a recognized citizen thereof, and duly and lawfully enrolled or admitted as such, and its refusal of such application shall be final when approved by the Secretary of the Interior.

By some process of reasoning, which attorneys for applicants herein have never been able to understand, the Commissioner held that the appearance before the Commission of persons for examination and identification, under the act of 1898, operated as an application for enrollment and that unless it appeared from the records of the Commission that applicants had made an assertion of right, when they appeared before it for examination and identification, they had forfeited their citizenship rights. Such a holding we respectfully submit is little short of an absurdity. Is it possible that a person claiming a right to an interest in an estate who appears before an examiner in response to an invitation for the sole purpose of examination and identification as to his rights, would be bound absolutely and irrevocably by the line of examination pursued by the examiner when the examiner refused or failed to conduct an examination which sought to establish his rights, and refused to permit any record to be made of an assertion of right by the party appearing, to participate in the prop erty? In this case the

examiner never sought to elicit information that would entitle applicants to that rights but in accordance with a decision of the Commissioner which was agreed to while in the field, the examination was conducted solely to determine the persons negro blood. It is well known to the Department that in 1899, at the time these parties were examined the Commission boldly asserted the proposition:"once of servile descent always of servile descent";"that the child followed the servile status of its negro mother", which holding was wholly falacious.

The records of examination and identification as thus made by the Commission were never transcribed and were therefore never accessible to the petitioners herein until the early part of the year of 1903.

In the meantime Congress passed an act under date of July 1st, 1902,(32 Stats. 641-646) which, by action 27 required the Commission to proceed in strict accordance with the acts of June 28th, 1898, and of May 31st, 1900, as follows:

> The rolls of the Choctaw and Chickasaw citizens and Choctaw and Chickasaw freedmen shall be made by the Commission to the Five Civilized Tribes in strict compliance with the act of Congress approved June 28th, 1898. (30 stats. 495) and an act of Congress approved May 31st, 1900 .....

Section 34 of the same act provided:

> During the ninety days first following the date of the final ratification of this agreement the Commission to the Five Civilized Tribes may receive applications for enrollment only of such persons whose names are on the tribal rolls but who have not heretofore been enrolled by said Commission, commonly known as "delinquents." .....

Neither the act of June 28th, 1898, the act of May 31st, 1900, or this act affected, in the remotest degree, the rights of the petitioners in the case at bar. Their names were by operation of the act of June 10th, 1896, placed on the authenticated, official and final roll of citizenship and have ever since remained thereon and are thereon in law today.

Having placed the names of each any every one of the

petitioners herein on the Choctaw freedman roll, and having held that their appearance before the Commission in 1898, operated as an application for enrollment, and that the applicants were bound by the enrollment records and having held as in the case of Joe and Dillard Perry, and many other similar cases, that under the act of May 31st, 1900, it sould not "receive, consider or make any record of any application for a correction of its own errors where such correction would place the name of the applicant on the roll on which his name rightfully belonged, the Commissioner evidently believed that he had finally and forever defeated the rights of the petitioners herein. But the Assistant Attorney General for the Department of the Interior under date of November 11th, 1905, which was appealed from the decision of the decision of the Commission, reinstated your petitioners in their rights, provided, only, that they could show by competent evidence that at the time they appeared before the Commission for examination and iden - tification under the act of June 28th, 1898, they asserted their right to enrollment as citizens of the Choctaw Nation.

DETERMINATION OF COMMISSIONER TO OVERRIDE THE JUDICIAL FINDINGS OF THE ATTORNEY GENERAL AS APPROVED BY THE SECRETARY OF THE INTERIOR.

Anticipating the decision of the Department in that case the Commissioner to theFive Civilized Tribes drafted a bill which was received by the Department n or about November 15th, 1905, as will appear from an examination of the letter of transmittal, which rendered null and void the decision of the Department in the case of Joe and Dillard Perry. It is well to remember that the Departmental decision in the above case was rendered November 11th and four days thereafter the draft of the bill referred to was received by the Department. The Commissioner then went to Washington as is well known to

the Attorney General for the Department of the Interior, and the Secretary of the Interior, and secured the approval of the draft of the proposed law, prepared by him, by the Department. The Commissioner then went to Congress and appeared before the Committees thereof, and by false and misleading statements of fact and of law, secured the enactment of said bill into law, which was approved by the President April 26th, 1906. The fourth section of that bill which was designed to defeat the rights of the petitioners herein, as well as all others similarly situated, provided as follows:

> Section 4. That no name shall be transferred from the approved freedman roll or any other approved rolls of theChoctaw, Chickasaw, Cherokee, Creek or Seminole tribes, respectively, to the enrollment of citizens by blood, unless the records in charge of the Commissioner to the Five Civilized Tribes show that application for enrollment as a citizen by blood was made within the time prescribed by law, by or for the party seeking the transfer, and said records shall be conclusive evidence as to the fact of such application. .....

While said Commission was urging the enactment of legislation by Congress containing the above quoted provision he published from the office of the Commission, at Muskogee, under date of January 2nd, 1906, the following subterfuge notice to your petitioners:

> In cases of petitioners who do not appear from the records of this office to have formerly applied for enrollment to the Commission to the Five Civilized Tribes as citizens of the Choctaw or Chickasaw Nations, within the time prescribed by law, the Commission will require conclusive evidence to the effect that application was made or attempted to be made within the time specified for that purpose.

DUPLICITY OF COMMISSIONER.

Could anything have been more cunning and deceptive than the above notice under the circumstances? Here we find the Commissioner to the Five Civilized Tribes, representing the Government of the United States, sworn to obey the laws thereof; under positive instuctions to deal with the Choctaw people--ignorant and unlettered political wards of the Nation--according

to the principles of equity and justice; administering a trust; acting in a fiduciary capacity; covertly holding out to them a promise, as appears by the notice issued by him under date of January 2nd, 1906, that they would have an opportunity to establish by competent evidence their rights, and at the same time bending his every effort to secure the enactment of legislation, which he believed would finally and forever despoil them of their rights. To your petitioners he was Dr. Jekyll, at Washington, and in reality, he was Mr. Hyde.

Fortunately however, neither section four of the act approved April 26th, 1906, or any other provision thereof, affects the rights of your petitioners. Their names were in law on the authenticated, official and final Choctaw tribal roll, having been placed thereon by operation of the act of June 10th, 1896, and are ipso jure thereon today.

PETITION SHOULD BE GRANTED.

Counsel for petitioners respectfully submit that the Government of the United States is the legal guardian of petitioners herein; that the Secretary of the Interior is by law given final jurisdiction to hear and determine the rights of the petitioners herein-----incompetent political wards of the Government---; that he is by law directed to administer the affairs of the Choctaw people according to law, justice and equity; that the relief prayed for in the petition filed by the petitioners herein is in accordance with law, justice and equity, that they are in fact and law citizens of the Choctaw Nation; that the Commissioner to the Five Civilized Tribes never possessed the authority or right to enroll them as freedmen; that the Secretary of the Interior could only have approved their allotments as freedmen by mistake and without any knowledge of their status as citizens, and that a strict adherance to the eternal principles of law, and justice and equity demand that

the petitioners herein be reinstated in their property rights and that their names be written on the authenticated, official and final roll of the Choctaw Nation, on which roll their names are in law today.

(Signed) Albert J. Lee

Counsel for petitioners.

united States of America ()
()
Indian Territory () ss
()
Southern District ()
()

Albert J. Lee, first being duly sworn, on oath states that on this the 10th day of September, 1906, he served a copy of the above and foregoing frief and argument upon the firm of Mannsfield, McMurray and Cornish attorneys for the Choctaw and Chickasaw Nations, at South McAllister, I.T. by registered letter, in which was also inclosed the petition, which it is the intention of this brief to support, registery receipt for which is attached to the original petition.

(Signed) Albert J. Lee

(SEAL)

Subscribed and sworn to before me this 9th day of September 1906.

(Signed) D. H. Dawson

notary public.

CITY AND COUNTY OF DENVER)-
) SS
STATE OF COLORADO)

AFFIDAVIT OF PEARL OVERHOLSER.

Pearl Overholser, first being duly sworn on oath states, That she is a resident of the city and county of Denver, state of Colorado, and is now employed as a stenographer and typewriter. That she copied the affidavits attached hereto of Albert J. Lee, Ellis Williams, Charles Cohee, Soloman Gilbert, W. L. Bennett and Thomas Norman, and that the attached copies are true and correct copies of the original affidavits which are now in the possession of Webster Ballinger.

(Signed) Pearl Overholser

Subscribed and sworn to before me this 31st day of August, 1906.

(Signed) James D. Bennett
Notary Public.

My commission expires Mar 10-1907

(SEAL)

UNITED STATES OF AMERICA)
(
INDIAN TERRITORY) SS.
(
SOUTHERN DISTRICT.)

AFFIDAVIT OF ALBERT J. LEE.

Albert J. Lee, first being duly sworn on oath states, that on the 12th day of February, 1906, at the office of the Commissioner to the Five Civilized Tribes he examined the records and correspondence in the Choctaw freedman case of Mary Butler, et al., and among the papers of which, he found the letter set out herein below, and which he states he copied verbatim and that the same reads a follows:

DEPARTMENT OF THE INTERIOR

COMMISSION TO THE FIVE CIVILIZED TRIBES,

MUSKOGEE, INDIAN TERRITORY. March 16,1901

Prince Butler,
Grant, I. T.

Dear Sir:

Receipt is hereby acknowledged of the application for enrollment as a citizen of the Choctaw Nation of George Butler the infant son of Prince and Mary Butler, born April 3rd, 1900.

The application is again returned for the reason as stated in the Commission's letter of the 23rd of February. The mether of the child appears upon our records as listed for enrollment as a Chickasaw freedman. There is enclosed you herewith a new blank application which you will,have made out in conformity with the corrections made in lead pencil upon the application returned you herewith.

upon the return of the new application in proper form for the enrollment of the child as a freedman the matter will be given further consideration.

Yours truly,

(SEAL)

Acting Chairman.

Albert J. Lee.

Subscribed and sworn to before me this the 14th day of February,1906.

Mary J. Taylor.
Notary Public,within and
for the Southern District of
the Indian Territory.

My commission will expire
March the 10th, 1908.

UNITED STATES OF AMERICA
INDIAN TERRITORY
SOUTHERN DISTRICT

AFFIDAVIT OF ELLIS WILLIAMS.

Ellis Williams first being duly sworn on oath states, that he is about 60 years old, a resident of the Chickasaw Nation and lives at the town of Berywn in said Nation.

Affiant further states that when the Commission to the Five Civilized Tribes first came to the Chickasaw Nation for the purpose of receiving applicatins for enrollment they had two tents, in one of which applicants for enrollment as citizens by blood were received, in the other applicants for enrollment as freedmen.

He further states that he appeared before the Commissioner, Capt. McKennon, in charge of the tent where applications were being made for enrollment as citizens of the Chickasaw Nation, and asked to be enrolled as a citizen of said Nation.

Affiant states that the said Commissioner in charge informed him that he could not at that time receive his application and directed him to the tent wherein applications were being received for enrollment as freedmen of the Chickasaw Nation.

(SEAL) He states that he was continuously present for one week at Pauls Valley, and personally knows, that each and every person of mixed Indian and negro blood who applied to the said McKennon for enrollment as a citizen by blood, received the same instructions as he had received and were permitted to make application in the freedman tent only.

his
Ellis X Williams.
mark

Witness to mark.
Maude Hunter
J. A. McNaught.

Subscribed and sworn to before me this 8th day of March, 1906.
Mary J. Taylor.
So. Dis. I. T.

Com. Expires 3/10/08.

Exhibit one-2.

UNITED STATES OF AMERICA

INDIAN DISTRICT

SOUTHERN JUDICIAL DISTRICT.

AFFIDAVIT OF CHARLES COHEE.

Charles Cohee, first being duly sworn on oath states, that he is 57 years of age. Resident of the Chickasaw Nation, Indian Territory, and lives at the town of Berwyn, in said Nation and Territory, That he is enrolled as a Chickasaw freedman and that on the 1st day of September, 1898, he was appointed by R. N. Harris, Governor of the Chickasaw Nation, a member of the committee to sit with the Dawes Commission for the purpose of identifying applicants for enrollment as freedmen: that he was again appointed to the same position by Governor Johnson in April 1899, and that he worked every day with the Commission during their sittings in the Chickasaw Nation and most of the time during their sittings in the Choctaw Nation.

Affiant further states that at the beginning of the work the committee of which he was a member in making statements to the Dawes Commission of the status of applicants made particular mention of those, who claimed to have Indian blood; that the applications of such persons claiming Indian Blood were received a while by the Commission, but that in a short time, about 15 days after the Committee began its sittings, all such applications were rejected by the said Dawes Commission and the committee of which affiant was a member was informed that those applicants who were born to slave mothers or to negro women who were descended of slaves, were freedmen, and would be enrolled as such only, and the said committee was advised to discontinue hearing the statement of applicants as to their Indian blood, as in no case would they be enrolled as Indian citizens: and that therefore the said committee from that time on, with possibly a few exceptions refused to hear statements of persons of mixed colored blood, of their claim that they were possessed of Indian blood in any degree whatever; that the said committee from that time on in stating to the Commission status of applicants; only made mention of such family relations as would establish their rights as freedmen, and made no mention whatever of the existence of Indian blood, although in many instances they knew applicants were possessed of such.

Charles Cohee.

(SEAL)
Subscribed and sworn to before me this 21st day of November, 1905.

J. A. McNaught.
Notary Public.

My commission expires March 17, 1909.

Exhibit One-3.

UNITED STATES OF AMERICA

INDIAN TERRITORY

SOUTHERN DISTRICT.

AFFIDAVIT OF SOLOMAN GILBERT.

Soloman Gilbert first being duly sworn on oath states that he does not know his exact age but believes that he is about 60 years of age; that he is a half breed Chickasaw Indian and was born in the Choctaw Nation at a point between Doaksville and the old Spencer Academy; that he lived it the Choctaw and Chickasaw Nations all his life, having moved from the former to the latter and settling on Sandy Creek when he was a good sized boy.

Affiant states that in September 1898 he was appointed a member of the committee to sit with the Dawes Commission for the purpose of aiding that commission in identifying Chickasaw freedmen; that he acted on said committee continuously during the sittings of the said Dawes Commission in the Chickasaw Nation with the exception of the last two places at which the Commission sat.

Affiant states that with the exception of a few cases at the beginning of the work his committee acting under instructions from the Dawes Commission made no statement to that Commission of the claims of any applicant for enrollment as Chickasaw citizen by blood, but stated only such blood relations as would entitle applicant to enrollment as freedmen.

Solomon Gilbert
his X mark.

Witness to mark:
F. W. Fisher.
G. T. Fisher.

Subscribed and sworn to before me this the 7th day of December 1905.

(SEAL)

T. J. Carson.
Notary Public Southern District
Indian Territory.

UNITED STATES OF AMERICA

INDIAN TERRITORY

SOUTHERN DISTRICT.

AFFIDAVIT OF W. L. BENNETT.

W. L. Bennett, first being duly sworn on oath states that he is 35 years old, a resident of the Chickasaw Nation, Indian Territory, and lives at the inland town of Woodford, in said Nation.

Affiant further states that when the Commission to the Five Civilized Tribes came down into the Choctaw and Chickasaw country for the purpose of enrolling persons who claimed rights in either of the said nations, a committee of freedmen was appointed to act on behalf of the Nation with said Commission for the purpose of aiding them in identifying persons entitled to enrollment as freedmen of the Nations. He states that he accompanied said Committee in the capacity of an employee and was with them continuously from the time they began their work at Stonewall, Indian Territory, until the Commission finished its work at Ardmore, Indian Territory. (SEAL) He further states that it was a rule of the Commission to the Five Civilized Tribes, that when a person appeared in the tent wherein applications were received for enrollment as citizens by blood and who looked to be a freedman, he was not allowed to make application there but was directed to another tent in which application for enrollment as freedment only was received. It was further a rule of said Commission that no person claiming either as a citizen by blood or as a freedman would be enrolled if their mother was a stateswoman. He states that this rule of the Commission in so far as it affected freedmen was shortly changed and persons were enrolled as freedmen whether they descended as such

Exhibit One-5.

from either mother or father, but that the rule was never changed, so far as affiant can now remember, in the matter of the enrollment of persons of negro blood who claimed descent from an Indian Citizen.

Affiant further states that so far as he can remember he does not recall a single instance in which an application was received by the Commissioner in charge of the tent wherein application was made for enrollment as citizens by blood but that in each and every instance persons of mixed Indian an negro blood who appeared at that tent and asserted their rights to be enrolled as citizens of the Chickasaw Nation were directed to the freedman tent.

Affiant states that hundreds of persons were thus prevented from making application for enrollment as citizens by blood of the Chickasaw Nation.

W. L. Bennett.

Subscribed and sworn to before me this the 8th day of March, A. D. 1906.

Mary J. Taylor.

Notary public within and for the Southern District of the Indian Territory.

My Commission will expire
March the 10th, 1908.
(SEAL)

UNITED STATES OF AMERICA

INDIAN TERRITORY

SOUTHERN DISTRICT

AFFIDAVIT OF THOMAS NORMAN.

Thomas Norman first being duly sworn on oath states that he is a practicing attorney at law at the present time in good standing with an office in Ardmore, Indian Territory, of which place he is a resident.

Affiant further states that in 1898 when the Commission to the Five Civilized Tribes was established in Ardmore for the purpose of receiving applications of persons claiming rights in the Chickasaw Nation, he was frequently before said Commission in behalf of applicants.

He states that the Commission had two or three deff-erent tents, one in which they enrolled persons claiming by blood, another in which they enrolledfreedmen and the third in which they enrolled persons claiming by intermarriage, adoption, etc.

That to his personel knowledge when a person presented himself to the Commission in the tent where enrollment s by blood were being made, who had the appearance of a freedman he was directed to the tent in which enrollments of freedmen were being made, and that the application of such persons were not received in the tent where enrollments by blood were being made.

(SEAL) He further states that it became a matter of common knowledge that persons who were freedman or had the appearance of freedmen would be received by the Commission and allowed to make application in that tent only wherein freedmen as such were enrolled.

Thos. Norman.

Subscribed and sworn to before me this 8th day of March, 1906.

J. L.Riggins.
Notary Public

Commission expires Jany. 27th, 1910.

Exhibil One-7.

BEFORE THE HONORABLE SECRETARY OF THE INTERIOR

DEPARTMENT OF THE INTERIOR

WASHINGTON, D.C.

PETITION OF SUSAN BRASHEARS, MARY JANE MCCOY, MICHAEL MCCOY, ELIZABETH ROBUCK, FRANCIS BOATWRIGHT, AND EMILY COOK: ISAAC COOK, LILA COOK, NELLIE COOK, WILLIAM COOK, AND EVA COOK, MINOR CHILDREN OF SAID EMILY COOK: OLIVER BOATWRIGHT, TOMMIE BOATWRIGHT, JIMMIE BOATWRIGHT, MARION BOATWRIGHT, CLEATON VICTOR BOATWRIGHT AND GEORGE WASHINGTON BOATWRIGHT, MINOR CHILDREN OF SAID FRANCIS BOATWRIGHT, FOR INDIVIDUAL ALLOTMENTS TO THEM OF LAND IN THE CHOCTAW NATION AS MEMBERS OR CITIZENS OF THE SAID

CHOCTAW TRIBE OR NATION.

Come now yourpetitioners in the above entitled cause, through their attorneys, Albert J. Lee, of Ardmore, Indian Territory ~~and F. P. Doyle, of Washington, District of Columbia,~~ and asserts as follows:

1.

That theyare lineal descendants and legitimate issue of Oliver McCoy, a recognized and enrolled member, by blood, of the Choctaw Nation, and of Susan McCoy, a legally adopted and enrolled citizen of said Choctaw Nation.

11.

That theyare citizens in law and in fact of said Choctaw Nation by reason of their descent from the said Oliver McCoy and

SusanMcCoy, by birth in the Nation, continued and unterrupted residence therein and allegiance thereto.

lll.

That Oliver and Susan McCoy were duly and legally intermarried according to the Choctaw laws sometime during the year of 1870 of thereabouts, that as a result of said union there was born unto thesaid McCoys the following named children, to-wit; Francis, Emily, Michael, Elizabeth and Mary Jane.

lv.

That on page eleven of the 1885 census roll of Kiamatia County, Choctaw Nation, opposite the No. 166, appears the name of Oliver McCoy, thirty-four years of age, a full blood Choctaw Indian; that opposite No. 167, appears the name of Susan McCoy, thirty-three years of age, and the notation, "citizen by marriage to McCoy"; that the names of Francis, McCoy, Emily McCoy, Michael McCoy, and Elizabeth McCoy, appear upon said records opposite the numbers 168-169-171 and 172 respectively, with the notation opposite their names, "half blood citizens on father's side."

V.

That since the death of Oliver McCoy, his widow, Susan McCoy, legally and lawfully intermarried with on Brashears; that Francis McCoy legally and lawfully intermarried with one Boatwright, as aresult of which union there was born unto them the following named children, to-wit: Oliver, Tommie, Jimmie, Marion, Cleaton Victor and George Washington, all of whom are now living; that Emily McCoy legally and lawfully intermarried with one Cook, and as a result of said union there was born unto them the following named children, towit; Isaac, Lila, Nellie, Willie and Eva, all of whom are now living; that Elizabeth McCoy legally and lawfully intermarried with one Robuck bywhom she has had no children.

Vl.

That the act of Congress approved June 10th, 1896, confirmed the names of all Choctaws appearing on the 1885 census roll, and their descendants, born since said roll was made and that the names of Oliver McCoy, Susan McCoy, Michael McCoy, Elizabeth McCoy, Francis McCoy and Emily McCoy, appeared thereon, and were confirmed thereby together with the names of their descendants; that said confirmation entitled each and every one of them to all rights, privileges and immunities of any other citizen of said Nation, together withtheir descendants.

Vll.

That under and by virtue of the act of Congress approved June 10th, 1896, and as construed and defined by the act approved June 7th, 1897, the names of each and every one of your petitioners were ipso jure placed on the authenticated, official and final roll of citizens by blood of the Choctaw Nation; that they have ever since remained thereon, and are in law on said roll today.

Vlll.

That the Commissioner to the Five Civilized Tribes, did, without authority of law, and contrary to justice and equity, enroll each and every one of your petitioners herein as Choctaw freedmen, and did, without authority of law, and contrary to justice and equity, allot each and every one of your petitioners lands as freedmen of the Choctaw Nation.

WHEREFORE, your petitioners respectfully pray that each and every one of them be allotted, out of the allottable lands of the Choctaw Nation, such additional lands as will give to each and every one of them an amount of land equal in extent and value to lands allotted to other unqualified members of citizens of said

Choctaw Nation; that the names of each and every one of your petitioners shall be stricken from the freedman roll, where they were placed by the Commission to the Five Civilized Tribes without authority of law, and that the Commissioner to the Five Civilized Tribes be directed to perform the ministeral duty imposed upon him by law, of physically writing the names of your petitioners on the authenticated, official and final roll of the Choctaw Nation, upon which roll their names were ipso jure placed under and by virtue of the act approved June 10th, 1896, and that your petitioners may have such other and further relief as may seem just and proper.

Albert J. Lee.

Solicitors for Petitioners.

UNITED STATES OF AMERICA ()
INDIAN TERRITORY ()
SOUTHERN DISTRICT () SS

Albert J. Lee, first being duly sworn, on oath states that on this 10th day of September, 1906, he served a copy of the above and foregoing petition upon the firm of Mannsfield McMurray and Cornish, attorneys for the Choctaw and Chickasaw nations, by depositing the same in the registered mail addressed to said firm at South McAllister, I. T. the registery receipt for which is hereto attached.

Albert J. Lee

Subscribed and sworn to before me this 9th day of September 1906.

D.W. Dawson
Norary Public.

BEFORE THE HONORABLE SECRETARY OF THE INTERIOR,
AT WASHINGTON, D. C.

In the matter of the petition of Susan Brashears, et al. for the correction of the enrollment records of the Commissioner to the Five Civilized Tribes, and for the transfer of their names from the freedmen roll to the roll of citizens by blood of said Tribe.

REQUESTS FOR ORDER

Comes now the petitioners herein, by their attorney, and respectfully represent unto the Honorable Secretary of the Interior, that on Jan. 13, 1906 they filed with the Commissioner to the Five Civilized Tribes, under the rules and regulations prescribed by said Commissioner on Jan. 2, 1906, a petition for the transfer of their names from the freedman roll of the Choctaw Nation to the roll of citizens by blood of said Nation, and that on 30th day of Jan. 1906, the Commissioner to the Five Civilized Tribes notified the petitioners that at his office on Feb. 13, 1906 he would hear any testimony submitted in support of the petition; that on the said 13th day of Feb. petitioners appeared before the Commissioner and evidence was taken, which disclosed thefact that these petitioners were enrolled by the Tribal Authorities of the Choctaw Nation as citizens of said Nation, and had by the Commission to theFive Civilized Tribes been enrolled as freedmen: that the stenographic report of the proceedings had on the said 13th day of Feb. 1906 were transcribed and sworn to on the 20th day of Feb., 1906 that no action

has been taken thereon by said Commissioner, and that on the 2nd day of June, 1906, petitioners asked to be advised as to what time the Commissioner would proceed to render a decision. Under date of June 6, 1906, said Commissioner by letter advised, "That decision would be rendered in said case as early as practicable."

WHEREFORE, Considering the fact thatthese petitioners have complied with law, and, the fact that their names appear upon the Tribal Rolls of the Choctaw Nation, they respectfully pray the Honorable Secretary to issue an order directing the Commissioner to the Five Civilized Tribes to render a decision upon the question of their transfer.

Respectfully submitted,

Albert J. Lee
Attorney for Petitioners.

UNITED STATES OF AMERICA,
INDIAN TERRITORY,
SOUTHERN DISTRICT.

Albert J. Lee, being duly sworn states that on this the 14th day day of June, 1906, he mailed by registered letter, a copy of the foregoing, to Mansfield, McMurray & Cornish, Attorneys for the Choctaw and Chickasaw Nations, at South McAlester, I. T.

Albert J. Lee,

Subscribed and sworn to before me, this 14th day of June, 1906.

J. A. McNaught.
Notary Public.

My commission expires the 17 day of March, 1909

DEPARTMENT OF THE INTERIOR,
COMMISSIONER TO THE FIVE CIVILIZED TRIBES.
Muskogee, Indian Territory, February 13, 1906.

In the matter of the application for the transfer of the names of Susan Brashears, Mary Jane McCoy, Michael McCoy, Lizzie Robuck, Francis Boatright, Emma Cook, Isaac, Lila, Nellie, Willie and Eva Cook from the roll of Choctaw Freedmen to the roll of citizens by blood of the Choctaw Nation.

Under the regulations adopted by the Commissioner to the Five Civilized Tribes January 2, 1906, there was filed on January 15, 1906, by Albert J. Lee, Ardmore, Indian Territory, the attorney for the petitioners, a petition of Susan Brashears, MaryJane McCoy, Michael McCoy, Lizzie Robuck, Francis Boatright and Emma Cook, children of the said Susan Brashears, Isaac Cook, Lila Cook, Nellie Cook, Willie Cook and Eva Cook, minor children of the said Emma Cook, for the correction of the enrollment records of the Commissioner to the Five Civilized Tribes, in the matter of their enrollment as freedmen of the Choctaw Nation, and for the transfer of their names from the said freedmen roll to the roll of Choctaw citizens by blood.

January 30, 1906, the petitioners, Susan Brashears, Atlas, Indian Territory, Mary Jane McCoy, Atlas, Indian Territory, their attorney of record, Albert J. Lee, Ardmore, Indian Territory, and Messrs. Mansfield, McMurray & Cornish, attorneys for the Choctaw and Chickasaw Nations, South McAlester, Indian Territory, were advised that the Commissioner to the Five Civilized Tribes would at his office at Muskogee, Indian Territory, on Tuesday, February 13, 1906, nine o'clock A.M., hear such testimony and receive such other evidence as might be presented by the petitioners in support of their application for the transfer of their names from the roll of Choctaw Freedmen to the roll of citizens by blood of the Choctaw Nation, and by the attorneys for the Choctaw and Chickasaw Nations.

Now on this 13th day of February, 1906, at nine o'clock A.M., this case being called for hearing, in conformity with the notices to the petitioners, their attorney of record, and the attorneys for the Choctaw and Chickasaw Nations, the following appearances were entered and proceedings had:

Appearances:

Susan Brashears and Mary Jane McCoy, Petitioners.
Albert J. Lee, attorney for petitioners.
G. Rosenwinkel, appearing on behalf of Mansfield, McMurray & Cornish, attorneys for Choctaw and Chickasaw Nations.

By Mr. Lee:

Now Mr. Commissioner, let the records show that the request was made to have included in the record the names of Oliver Boatright, Tommie Boatright, Jimmie Boatright, Marion Boatright, Cleaton Victor Boatright and George Washington Boatright, minor children of Francis Boatright, one of the petitioners herein.

By the Commissioner:

These children are not named in the original petition are they?

By Mr. Lee:

No sir.

By the Commissioner:

The hearing will be confined to the allegations contained in the petition under the regulations adopted by the Commissioner to the Five Civilized Tribes on January 2, 1906. The testimony to be taken in this case will not apply to those applicants.

By Mr. Rosenwinkel:

The Choctaw and Chickasaw Nations wish to object to any proceedings being taken in this cause, for the reason that the records of the Commission to the Five Civilized Tribes do not show that any application was ever made by or on behalf of these applicants for their enrollment as citizens by blood of the Choctaw or Chickasaw Nations.

We object further, for the reason that even if such an application had been made that the Commission would be without jurisdiction to hear or consider their applications, because their names ~~heim~~ do not appear upon the tribal rolls of either of said nations.within the meaning of the Act of May31, 1900.

By Mr. Lee:

Just let the record show now that we submit that the objections made by the attorneys for the Choctaw and Chickasaw Nations is in fact an answer to the petition filed in this case and is barred by the rules and regulations adopted by the Commissioner to the

Five Civilized Tribes January 2, 1906.

We further object to the insertion of the objection of the attorneys for the Chickasaw and Choctaw Nations, on the grounds that no objection can be made to testimony introduced except such objection is made upon the introduction of the testimony of the witnesses, for the reason that it is incompetent, immaterial or irrelevant to the issue as shown by the petition.

By Mr. Lee:

Now I want to ask if it is the practice of the Commissioner under the regulations to conduct the examination of the petitioners.

By the Commissioner:

The Commissioner will certainly conduct the examination to such an extent as to satisfy the Commissioner as to the identification of the applicants.

By Mr. Lee:

We wish to submit under the regulations we are entitled to conduct our own examination in chief, we wish to conduct our own examination.

(No objection offered by Commissioner).

SUSAN BRASHEARS, being duly sworn, testified as follows:

By the Commissioner:

Q What is your name? A Susan Brashears.
Q How old are you? A About 59, I think that is what I said when I was up before.
Q Where do you live? A I live near Hugo, Kiamatia County.
Q Have you been enrolled as a Choctaw or Chickasaw Freedman? A Been enrolled as a Choctaw Citizen.
Q Citizen, Freedman? A Yes sir.
Q Have you selected your allotment? A Just got twenty acres, all I got.
Q That is your entire allotment? A Yes sir, I think so, little strip of land.
Q How long have you been named Susan Brashears? A Going on five years or six.
Q Know what name you were enrolled under? A Susan McCoy.

The witness is identified upon the records of this office on Choctaw Freedmen Roll Card No. 615, and opposite No. 1346 upon the final rolls of Choctaw Freedmen approved by the Secretary of the Interior.

By Mr. Lee:

Q Are you enrolled by the Dawes Commission? A Yes sir.
Q How were you enrolled by the Dawes Commission? A Colored.
Q What do you mean, on the Freedmen Roll? A Yes sir.
Q Were you ever enrolled on any of the tribal rolls? A My old man said I was.

(Answer of the witness objected to by Mr. Rosenwinkel).

By the Commissioner:

Objection sustained.

By Mr. Lee:

Q I want to ask you when you were married to McCoy? When I was first adopted as a Choctaw citizen.
Q When were you adopted as a Choctaw citizen? A First adopted at old Goodland.
Q As to point of time? A I married first and walked right on in and was adopted.
Q What year? A I couldnt tell what year.
Q What year were you married to McCoy; let me ask it a different way; how long after the war were you married to McCoy, about how long? A About five years before I married after the war.
Q Immediately upon your marriage you were adopted as a citizen? A Yes sir.
Q That adoption was as an Indian citizen of the Choctaw Nation, was it? A Yes sir.

By Mr. Rosenwinkel:

Q Who adopted you as an Indian citizen? A One Green Thompson, used to follow around. Green Thompson was living at that time.
Q Who was it adopted you as an Indian citizen? A I mean to say Green Thompson.
Q Dont you know whether you were adopted as a Freedman or Indian citizen? A Adopted as colored citizen, Freedman.
Q Ever attempt to draw any money? A No sir.
Q Never drew any? A No sir.

By Mr. Lee:

Q The adoption that you speak of was the adoption after you were married to McCoy about five years after the Civil War? A Yes sir.

Q You just answered you were adopted as a freedman? A I was adopted as a citizen.

By the Commissioner:

Is it contended that this woman Susan Brashears was adopted by the Choctaw Tribe of Indians as a citizen of the Choctaw Nation?

By Mr. Lee:

Yes sir, and appears on the tribal rolls as such.

By the Commissioner:

Was she adopted by any act of the Choctaw National Council or any Citizenship Committee.

By Mr. Lee:

We dont contend that that is the case; our only contention is that this person is an enrolled Choctaw citizen, on the tribal rolls of citizens by blood of the Choctaw Nation.

By the Commissioner:

On what roll?

By Mr. Lee:

I think she appears on the 1885 roll.

By the Commissioner:

Q Susan, how old are you now? A About 59 I guess, this coming March, 6th of March.
Q In this petition you also mention Mary Jane McCoy, is she living? A Yes sir, she sits right here.
Q Is she your daughter? A That is my child.
Q How old is Mary Jane McCoy? A I cant keep up with their ages, she can speak for herself.
Q About how old is she? A About 15 I guess, I dont know how old she is, I cant keep up with their ages.
Q Now is Michael McCoy your son? A Yes sir.
Q Is he living? A Yes sir, at home.
Q Is Lizzie Robuck your daughter? A Yes sir.
Q Under what name is Lizzie enrolled? A McCoy.
Q Are Francis Boatright and Emma Cook your children? A Yes sir, that is my two children.
Q Are they all living? A Yes sir, they are living.
Q Whose children are Isaac, Lila, Nellie, Willie and Eva Cook?

A Emma's children.
Q Are they all living? A Yes sir.
Q Now are these persons that you have named in this petition, and concerning whom you have just testified, they have been enrolled as Choctaw Freedmen have they not? A That is what they were.
Q All selected allotments? A All but one, Francis, the smallest one.
Q Now you are 50 years of age? A Yes sir, I guess.
Q Where were you born? A In the Choctaw Nation.
Q Were you a slave? A Yes sir.
Q Whose slave? A Colbert's, old man, Sam Colbert.
Q Have you lived in the Choctaw Nation continuously since the time of your birth up to the present time? A Dont know any other place but that.
Q Now whatever rights, if any, that these other petitioners have, your children and grand-children, are through you are they not? A Yes sir.

By Albert J. Lee:

We didnt put in the record that some of these children are enrolled on the 1885 roll, they are there except Mary Jane McCoy; I didnt deem it necessary that that should be put in the record, by reason of her being on the roll.

By the Commissioner:

When did you apply to the Dawes Commission for the enrollment of yourself and family as Choctaw Freedmen? A Down there at Atoka.
Q When was that? A I dont know what time it was, sometime ago.
Q How long ago? A Been over a year, I guess, since I was up to Atoka.
Q What did you do at Atoka? A I went up there and filed on 20 acres of land.
Q That is when you selected your allotment? A Yes sir.
Q I am talking about when you went to the Dawes Commission and applied for the enrollment of yourself and family? A When did I?
Q Yes. A We were enrolled by the Dawes Commission when they were at old Goodland.
Q Was that the only time you went before the Dawes Commission to be enrolled? A Yes sir, Goodland, I went twice, when they was at old Goodland, the Dawes Commissioner had lots of camps.
Q Was that the only time that you went before the Dawes Commission to be enrolled, when they were at Goodland in those tents? A Yes sir .

By Mr. Lee:

We will let it be stated that she didnt make any assertion of her rights as a citizen by blood when she was enrolled as a Freedman of the Choctaw Nation.

By the Commissioner:

Now do I understand Mr. Lee that it is not contended in behalf of these persons that they have ever asserted any rights to be enrolled as citizens of the Choctaw Nation.

By Mr. Lee:

It is contended that it is immaterial whether they did or did not at the time they were enrolled as Choctaw Freedmen make any assertion of Choctaw descent, or rights as Choctaw citizens by blood.

By the Commissioner:

Then there is no contention, as I understand, that these people specifically within the time prescribed by the Act of July 1, 1902, applied to the Dawes Commission to be enrolled as citizens of the Choctaw Nation, or asserted any rights to enrollment as such.

By Mr. Lee:

They never formally.

By the Commissioner:

Have they ever applied? A

By Mr. Lee:

I dont know.

By the Commissioner:

Q Do you remember that you have ever made any application to this Commission up to three years ago last Christmas for the enrollment of yourself, children and grand-children as citizens by blood of the Choctaw Nation. A No answer.

By Mr. Lee:

Q When you were before the Commission and enrolled as a Freedman did you make any assertion of the Choctaw blood of yourself and children? A Yes sir, that was up at Antlers.
Q When was you at Antlers? A When they was taking up people's names up there.
Q How long ago was that? A I dont know , I cant tell you when it was.
Q About how long? A I dont know what time it was.

By the Commissioner:

Q Have you or your children ever been enrolled by the Choctaw Tribal authorities as citizens of the Choctaw Nation? A No answer.

By Mr. Lee:

Commissioner please, she answered she was after she married McCoy.

By the Commissioner:

Q Have you? A I told you that I was.
Q You said you had been adopted? A Yes sir.
Q Have you ever been adopted, your name ever been put on any roll? A What do you mean.
Q You know what the rolls are; when the Choctaws made the roll of citizens? A When they adopted us, didnt they put us on the roll?
Q When who adopted you? A The Dawes Commission I guess.
Q Who is this man, McCoy, that you married, who is he? A Choctaw
Q What is his full name? A Oliver McCoy.
Q How long has he been dead? A Nine years.
Q How many children did you have by him? A Well I have got two dead and five living, seven children.
Q What are their names? A Francis, Emma, Michael, Lizzie and Mary, two dead.
Q What are the names of the ones dead? A Molsy and Tommie.

By Mr. Lee:

Q Mary also. A Yes sir, I said Mary.

By the Commissioner:

Q Have you or these children ever drawn any money as citizens of the Choctaw Nation? A We never drawed none, their Pa did.
Q You say your husband, McCoy, has been dead about nine years?

A Been dead about nine years.
Q Was he living when the 1893 payment was made to the Choctaws? A When they drawed so much money?
Q $103 apiece? A Yes sir, he was living.
Q Did he draw any money? A Yes sir.
Q Did he draw any money for you or the children at that time? A Drawed for himself.
Q Did he attempt to draw for you or the children? A I never did ask him.
Q You was born a slave, wasnt you? A Yes sir, I was a slave.
Q A slave of Sam Colbert, a Choctaw Indian? A Old man Colbert.
Q Now if you had any rights as a Choctaw citizen you have acquired them by your marriage to McCoy? A Yes sir.
Q You are not positive of any Choctaw blood are you? A I dont claim to be.
Q When were you married to McCoy? A I told you it was at old Goodland, I married and was registered.
Q How long ago was that? A I couldnt tell you, been such a long time.
Q About how long? A I dont know sir, I cant tell you.
Q Who married you to McCoy? A Solomon Hotama.
Q Did you get a marriage license and certificate? A He never gave it to us, my old man told me it was recorded in a book.
Q Have you any evidence of your marriage to this Choctaw Indian McCoy? A I never got none.at all.
Q Now you stated in your testimony that whatever rights if any your children and grand-children had were entirely through you, was that correct? A No sir, I didnt tell you that.
Q Now in this petition you claim that you are a Choctaw by blood and ask that your name be transferred from the roll of Choctaw Freedmen to the roll of citizens by blood of the Choctaw Nation, now you are not positive of any Choctaw blood at all are you? A I dont know nothing about my blood, dont know nothing about my blood. I told you once what my father was.
Q Your father and mother were both negros and slaves, were they? A No sir.
Q You do not claim any rights as a citizen of the Choctaw Nation except by reason of your marriage to this man, McCoy? A No answer.

By Mr. Lee:

The petition here states that her father, Martin Guess, was a white man, an adopted citizen of the Choctaw Nation; that is before the Commission, if the Commissioner please.

By the Commissioner:

Q Answer the question please? A My father was a Choctaw man.
Q Were your father and mother both citizens of the Choctaw Nation? A What you mean, applied here to this nation?
Q Do you claim any rights as a Choctaw citizen through your father or mother? A My mother was a colored woman. My father was a Choctaw man, come here with the Indians from old Mississippi, lived here with them, and died here.
Q Was he a citizen of the Choctaw Nation, an enrolled citizen of the tribe? A I guess he was by him coming up with them,
Q You dont know? A No sir, I dont know, come here with them when they first come to this country.
Q Now Susan at the time you appeared before the Dawes Commission at Goodland, did you say anything about your children being entitled to enrollment as Choctaw Indians? A What place you mean?
Q When you were at Goodland, when you applied for your enrollment and the enrollment of your children? A No answer.

By Mr. Lee:

I want to ask if the Commissioner deems it his right or his du y to take upon himself the cross examination of the witnesses, when there is present for that purpose an attorney for the Choctaw and Chickasaw Nations .

By the Commissioner:

Objection is overruled. The Commission to the Five Civilized Tribes is authorized to avail itself of any reasonable means to reach the facts with reference to the right of any applicant.

By the Commissioner:

Q Answer that question, Susan; I want to know when you applied to the Dawes Commission for the enrollment of yourself and your children as Choctaw Freedmen, and you said nothing about them being entitled to enrollment as Choctaw citizens by blood of the Choctaw Nation? A Yes sir, I did. I told them my children ought to be enrolled as Choctaws, I sure did.
Q Now tell us exactly what took place there? A They enrolled us, that is all my children. They said that my children ought not to come on the colored roll at all, ought to be on the Indian roll.
Q Who told you? A Man doing the work.
Q Who was it? A I cant tell you, one man there at the time who was old Dick Murray's son, where he is I dont know. He asked my girl how she come to be down on the colored roll and asked her, why aint you on the roll with your daddy.
Q Who was it? A One of Murray's boys, old Dick Murray's son, dont know whether he is living or not.

Q What was the full name of this Choctaw Indian that you married? A Oliver Stock McCoy.
Q Did he have any other name? A Boss, just a nickname, short name.

By Mr. Rosenwinkel:

Q Do you remember the name of the man that swore you at Goodland when you appeared before the Commission? A No sir, I couldnt, they were strangers to me.
Q Well you remember that dont you? A Dont remember who he was.
Q You went before him did you? A Yes sir.
Q Held up your hand did you? A Yes sir; he was off to one side of the room where the colored people were.
Q Who was off to one side? Indians at one table and colored people at one table? A Yes sir.
Q You went where the colored people were did you not? A Yes sir.
Q If you were an Indian and claimed Indian rights whey did you not go where the Indians were? A Well, they would have pushed me away.
Q You are quite positive that they would have pushed you away? A Yes sir.
Q Would you remember that Commissioner's name if you heard it now? A No sir, I wouldnt khow his name.
Q Did you have any conversation with him? A No sir.
Q You didnt tell him that you were an Indian? A No sir.
Q Didnt tell him that your children were Indians? A Yes sir.
Q This Commissioner that swore you? A I told him that I was a colored lady.

By Mr. Lee:

Q Why did you say that if you had have gone up to the table where they were enrolling Indians they would have pushed you away, what makes you think they would? A My old man wasnt there at the time, I couldnt go up by myself, if he had have been living I might have walked up with him.
Q Well that would not be sufficient for making you think you couldnt go up there, wasnt other colored people going up there? A You see we just had to go in and come right out, they would not allow us in there.

On Page 11 of the 1885 Census Roll of Kiamatia County of the Choctaw Nation, opposite No. 166, appears the name of Oliver McCoy, 34 years of age, a full-blood Choctaw Indian; opposite No. 167 appears the name of Susan McCoy, 33 years of age, a colored woman, and the notation, "Citizen by marriage to McCoy". The names of Francis McCoy, Emily McCoy, Molsy McCoy,

Michael McCoy and Elizabeth McCoy appear upon said record opposite the numbers 168, 169, 170, 171 and 172 respectively, as colored persons, with the notation opposite their names "Half-blood citizens on father's side".

The names of none of the petitioners appear upon the 1893 Choctaw leased district payment roll or the 1896 Census roll of citizens of the Choctaw Nation.

Witness Excused.

Cora Moore, being duly sworn, states that as stenographer to the Commissioner to the Five Civilized Tribes, she reported the proceedings had in the above entitled cause on the 13th day of February, 1906, and that the above and foregoing is a transcript of her stenographic notes taken in said cause on said date.

Cora Moore.

Subscribed and sworn to before me this 20th day of February, 1906.

Myron White

Notary Public.

F-5
O.L.J.

DEPARTMENT OF THE INTERIOR,
COMMISSIONER TO THE FIVE CIVILIZED TRIBES.

In the matter of the petition for the transfer of the names of Susan Brashears, et al., from the roll of Choctaw freedmen to the roll of citizens by blood of said nation.

----ooOooo----

Under the regulations adopted by the Commissioner to the Five Civilized Tribes, January 2, 1906, there was filed on January 15, 1906, by Albert J. Lee, attorney at law, Ardmore, Indian Territory, a petition praying for the transfer of the names of Susan Brashears, Mary Jane McCoy, Michael McCoy, Francis Boatwright, Lizzie Robuck, Emma Cook, Isaac Cook, Lila Cook, Nellie Cook, Willie Cook and Eva Cook, from the roll of Choctaw freedmen to the roll of citizens by blood of said nation.

The names of the petitioners, Susan Brashears (as Susan McCoy), Mary Jane McCoy (as Mary McCoy), Michael McCoy, Lizzie Robuck (as Lizzie McCoy), Francis Boatwright (as Frances Boatwright), Emma Cook, Isaac Cook, Lila Cook (as Lilly Cook), Nellie Cook, Willie Cook (as Willie N. Cook), and Eva Cook appear upon the approved roll of Choctaw freedmen apposite numbers 1346, 1349, 1347, 1348, 1310, 1295, 1296, 1297, 1298, 3209 and 1299, respectively.

It does not appear from the records in the possession of this office that any application has ever been made for the admission of the petitioners herein as citizens by blood of the Choctaw, or Chickasaw Nation, under the provisions of the Act of Congress approved June 10, 1896 (29 Stats., 321), or for their enrollment as citizens of said nations prior to December 25, 1902.

I am, therefore, of the opinion that in accordance with the opinion of the Assistant Attorney General for the Department of the Interior of September 28, 1906 (I.T.D. 11805, 15526-1905), in the case of Katie Wilson, et al., the petition herein should be denied under the provisions of the Act of Congress approved April 26, 1906 (34 Stats., 137), and it is so ordered.

Commissioner.

Muskogee, Indian Territory,
JAN 31 1907

F-5

COPY

Muskogee, Indian Territory, January 31, 1907.

Susan Brashears,

Hugo, Indian Territory.

Dear Madam:

I enclose herewithcopy of an order of the Commissioner to the Five Civilized Tribes of January 31, 1907, denying the petition submitted by Albert J. Lee, Ardmore, Indian Territory, as your attorney for the transfer of your name and the names of Mary Jane McCoy, Michael McCoy, Francis Boatwright, Lizzie Robuck, Emma Cook, Isaac Cook, Lila Cook, Nellie Cook, Willie Cook and Eva Cook from the roll of Choctaw freedmen to the roll of citizens by blood of the Choctaw Nation.

The petition, with the order of the Commissioner, has this day been transmitted to the Secretary of the Interior for review.

Respectfully,

SIGNED Tams Bixby

Commissioner.

Registered.

Incl. F-5

F-5

COPY

Muskogee, Indian Territory, January 31, 1907.

Mary Jane McCoy,

Atlas, Indian Territory.

Dear Madam:

I enclose herewith copy of an order of the Commissioner to the Five Civilized Tribes of January 31, 1907, denying the petition submitted by Albert J. Lee, Ardmore, Indian Territory, as your attorney for the transfer of your name and the names of Susan Brashears, Michael McCoy, Francis Boatwright, Lizzie Robuck, Emma Cook, Isaac Cook, Lila Cook, Nellie Cook, Willie Cook and Eva Cook, from the roll of Choctaw freedmen to the roll of citizens by blood of said nation.

The petition, with the order of the Commissioner, has this day been transmitted to the Secretary of the Interior for review.

Respectfully,

SIGNED Tams Bixby

Commissioner.

Registered.
F-5

F-5,

COPY

Muskogee, Indian Territory, January 31, 1907.

Albert J. Lee,

Attorney at law,

Ardmore, Indian Territory.

Dear Sir:

I enclose herewith copy of the order of the Commissioner to the Five Civilized Tribes of January 31, 1907, denying the petition submitted by you for the transfer of the names of Susan Brashears, Mary Jane McCoy, Michael McCoy, Francis Boatwright, Lizzie Robuck, Emma Cook, Isaac Cook, Lila Cook, Nellie Cook, Willie Cook and Eva Cook, from the roll of Choctaw freedmen to the roll of citizens by blood of said nation.

The original petition, with the order of the Commissioner, has this day been transmitted to the Secretary of the Interior for review.

Respectfully,

SIGNED Tams Bixby

Commissioner.

Registered.

Incl.F-5

F-5

COPY

Muskogee, Indian Territory, January 31, 1907.

Mansfield, McMurray & Cornish,

Attorneys for the Choctaw and Chickasaw Nation.

South McAlester, Indian Territory.

Gentlemen:

Inclosed herewith find a copy of the order of the Commissioner to the Five Civilized Tribes of January 31, 1907, denying the petition submitted by Albert J. Lee, Attorney at law, Ardmore, Indian Territory, for the transfer of the names of Susan Brashears, Mary Jane McCoy, Michael McCoy, Francis Boatwright, Lizzie Robuck, Emma Cook, Isaac Cook, Lila Cook, Nellie Cook, Willie Cook and Eva Cook from the roll of Choctaw freedmen to the roll of citizens by blood of said nation.

The original petition, with the order of the Commissioner, has this day been transmitted to the Secretary of the Interior for review.

Respectfully,

SIGNED Tams Bixby

Incl. F-5

Commissioner.

COPY

Muskogee, Indian Territory, January 31, 1907.

The Honorable,

The Secretary of the Interior:

Sir:

I have the honor to transmit herewith a petition filed with this office January 15, 1906, by Albert J. Lee, attorney for the petitioner, praying for the transfer of the names of Susan Brashears, Mary Jane McCoy, Michael McCoy, Francis Boatwright, Lizzie Robuck, Emma Cook, Isaac Cook, Lila Cook, Nellie Cook, Willie Cook and Eva Cook from the roll of Choctaw freedmen to the roll of citizens byblood of the Choctaw Nation, together with the order of the Commissioner to the Five Civilized Tribes of January 31, 1907, denying said petition.

Respectfully,

SIGNED Tams Bixby

Commissioner.

Through the
Commissioner of Indian Affairs.

2 Incl

J. F. Jr.

DEPARTMENT OF THE INTERIOR,

D. C. 10529-1907. WASHINGTON. FHE.
I.T.D.3616-1907.

February 19, 1907.

L. R. S.

Direct.

Commissioner to the Five Civilized Tribes,

Muskogee, Indian Territory.

Sir:

January 31, 1907, you transmitted a petition for the transfer of the names of Susan Brashears, Mary Jane McCoy, Michael McCoy, Francis Boatwright, Lizzie Robuck, Emma Cook, Isaac Cook, Lila Cook, Nellie Cook, Willie Cook and Eva Cook from the roll of Choctaw Freedmen to the roll of citizens by blood of the Choctaw Nation, including your decision of January 31, 1907, denying such petition.

Reporting February 15, 1907 (Land 12507-07), the Indian Office recommends that said petition be denied. A copy of its letter is inclosed.

Your decision is hereby affirmed. The papers in the case and a carbon copy hereof have been sent to the Indian Office.

Respectfully,

Thos Ryan,

First Assistant Secretary.

1 inc. and 2 for Ind. Of.

A. F. Mc.

2-20-07.

--Copy--

DEPARTMENT OF THE INTERIOR,

OFFICE OF INDIAN AFFAIRS,

LAND.
12507-1907. WASHINGTON.

February 15, 1907.

The Honorable,

The Secretary of the Interior.

Sir:

There is forwarded herewith report of Commissioner Bixby, dated January 31, 1907, relative to a petition filed January 15, 1906, praying for the transfer of the names of Susan Brashears, Mary Jane McCoy, Michael McCoy, Francis Boatwright, Lizzie Robuck, Emma Cook, Isaac Cook, Lila Cook, Nellie Cook, Willie Cook and Eva Cook from the roll of Choctaw freedmen to the roll of citizens by blood of the Choctaw Nation, with the order of the Commissioner of January 31, 1907, denying the petition.

All of the petitioners herein have been enrolled as Choctaw freedmen, and the Commissioner in decision of January 31, 1907, says that it does not appear from the record of his office that any application has ever been made for the admission of the petitioners as citizens by blood of the Choctaw or Chickasaw Nation under the provisions of the Act of June 10, 1896 (29 Stat.L., 321), or for their enrollment as citizens by blood prior to December 25, 1902.

The record contains no documentary evidence to show that application has ever been made by or on behalf of the petitionersfor

enrollment as citizens by blood of the Choctaw Nation prior to January 15, 1906, the date of the petition herein. Therefore no additional right to enrollment as citizens by blood accrues tothe petitioners by reason of the provisions of section 4 of the Act of April 26, 1906 (34 Stat.L., 137).

It is therefore recommended that the petition be denied.

Very respectfully,

C. F. Larrabee,

Acting Commissioner.

AJW-EH.

F-5

Muskogee, Indian Territory, March 2, 1907.

Mary Jane McCoy,

Atlas, Indian Territory.

Dear Madam:

You are hereby notified that on February 19, 1907, the Secretary of the Interior affirmed the decision of the Commissioner to the Five Civilized Tribes of January 31, 1907, denying the petition submitted by Albert J. Lee, Ardmore, Indian Territory, as your attorney for the transfer of your name and the names of Susan Brashears, Michael McCoy, Francis Boatwright, Lizzie Robuck, Emma Cook, Isaac Cook, Lila Cook, Nellie Cook, Willie Cook and Eva Cook from the roll of Choctaw freedmen to the roll of citizens by blood of the Choctaw Nation.

Respectfully,

Commissioner.

F-5

Muskogee, Indian Territory, March 2, 1907.

Susan Brashears,

Hugo, Indian Territory.

Dear Madam:

You are hereby notified that on February 19, 1907, the Secretary of the Interior affirmed the decision of the Commissioner to the Five Civilized Tribes of January 31, 1907, denying the petition submitted by Albert J. Lee, Ardmore, Indian Territory as your attorney for the transfer of your name and the names of Mary Jane McCoy, Micheal McCoy, Francis Boatwright, Lizzie Robuck, Emma Cook, Isaac Cook, Lila Cook, Nellie Cook, Willie Cook and Eva Cook from the roll of Choctaw freedmen to the roll of citizens by blood of the Choctaw Nation.

Respectfully,

Commissioner.

F-5

Muskogee, Indian Territory, March 2, 1907.

Albert J. Lee,

Attorney at law,

Ardmore, Indian Territory.

Dear Sir:

You are hereby notified that on February 19, 1907, the Secretary of the Interior affirmed the decision of the Commissioner to the Five Civilized Tribes of January 31, 1907, denying the petition submitted by you for the transfer of the names of Susan Brashears, Mary Jane McCoy, Michael McCoy, Francis Boatwright, Lizzie Robuck, Emma Cook, Isaac Cook, Lila Cook, Nellie Cook, Willie Cook and Eva Cook from the roll of Choctaw freedmen to the roll of citizens by blood of the Choctaw Nation.

Respectfully,

Commissioner.

F-5

Muskogee, Indian Territory, March 2, 1907.

Mansfield, McMurray, and Cornish,

Attorneys for the Choctaw and Chickasaw Nations,

South McAlester, Indian Territory.

Gentlemen:

You are hereby notified that on February 19, 1907, the Secretary of the Interior affirmed the decision of the Commissioner to the Five Civilized Tribes of January 31, 1907, denying the petition submitted by Albert J. Lee, Ardmore, Indian Territory, as attorney for the transfer of the names of Susan Brashears, Mary Jane Mc Coy, Micheal McCoy, Francis Beatwright, Lizzie Robuck, Emma Cook, Isaac Cook, Lila Cook, Nellie Cook, Willie Cook and Eva Cook from the roll of Choctaw freedmen to the roll of citizens by blood of the Choctaw Nation.

Respectfully,

Commisioner .

F-5

SUSAN BRASHEARS et al

Aug. 3-1906 order of denial prepared.

Jan. 31-1907 Refused.

Copy of Decision forwarded applicant, and attorneys Jan. 31-1907

Record Forwarded Dept.

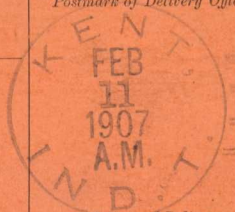
Action approved by Secretary of Interior Feb. 19-1907

Notice of Departmental action forwarded applicant + attorneys March 2-1907

This card must be neatly and correctly made up and addressed at the post office where the article is registered.

The postmaster who delivers the registered article must see that this card is properly signed, postmarked, and mailed to the sender.

Postmark of Delivery Office



and Date of Delivery.

Post Office Department.

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Penalty for private use to avoid payment of postage, $300.

RETURN TO:

Commission to the Five Civilized Tribes

Name of Sender .....

Street and Number, or Post Office Box. .....

MUSKOGEE,

INDIAN TERRITORY.

REGISTRY RETURN RECEIPT.

Form No. 1548.

Received from the Postmaster at Muskogee Ind Ter (Delivering office.)

Registered { Letter / Parcel } *No.* 22281 **From Post Office at MUSKOGEE, IND. TER.,**

Addressed to Susan Brashears (Name of addressee.)

Date Feb 11, 1907 (Date of delivery.)

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

Susan her X Brashears mark (Signature or name of addressee.)

(Signature of addressee's agent.)

A registered article must not be delivered to anyone but the addressee, except upon addressee's written order. When the above receipt has been properly signed, it must be postmarked with name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.

This card must be neatly and correctly made up and addressed at the post office where the article is registered.

The postmaster who delivers the registered article must see that this card is properly signed, postmarked, and mailed to the sender.

Postmark of Delivery Office

ATLAS
FEB
15
1907
IND. T.

and Date of Delivery.

Post Office Department.

OFFICIAL BUSINESS.

Penalty for private use to avoid payment of postage, $300.

RETURN TO:

Commission to the Five Civilized Tribes

Name of Sender .....

Street and Number, or Post Office Box. .....

MUSKOGEE,

INDIAN TERRITORY.

REGISTRY RETURN RECEIPT.

Form No. 1548.

Received from the Postmaster at Atoka I.T.
(Delivering office.)

Registered { Letter / Parcel } *No.* 2263 From Post Office at MUSKOGEE, IND. TER.,

Addressed to Mary Jane McCoy
(Name of addressee.)

Date 2-14, 1907
(Date of delivery.)

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

Mary Jane McCoy
(Signature or name of addressee.)

(Signature of addressee's agent.)

A registered article must not be delivered to anyone but the addressee, except upon addressee's written order.
When the above receipt has been properly signed, it must be postmarked with name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.

This card must be neatly and correctly made up and addressed at the post office where the article is registered.

The postmaster who delivers the registered article must see that this card is properly signed, postmarked, and mailed to the sender.

Postmark of Delivery Office

Post Office Department.

OFFICIAL BUSINESS.

Penalty for private use to avoid payment of postage, $300.

WASHINGTON, D.C. FEB 13 5 PM 1907

2 D

and Date of Delivery.

14308

RETURN TO:

Name of Sender _____

Street and Number, or Post Office Box. } _____

Commission to the Five Civilized Tribes

MUSKOGEE, FEB 15 2-PM 1907 IND.T.

MUSKOGEE,

INDIAN TERRITORY.

REGISTRY RETURN RECEIPT. Form No. 1548.

Washington DC

Received from the Postmaster at Atmore Ala

(Delivering office.)

Registered { Letter / Parcel } *No.* 22256, **From Post Office at MUSKOGEE, IND. TER.,**

Addressed to Albert J Lee

(Name of addressee.)

Date 2/13 *190*

(Date of delivery.)

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

Albert J Lee

(Signature or name of addressee.)

(Signature of addressee's agent.)

A registered article must not be delivered to anyone but the addressee, except upon addressee's written order. When the above receipt has been properly signed, it must be postmarked with name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.